

Circular and temporary migration: empirical evidence, current policy practice and future options in Germany

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Federal Office
for Migration
and Refugees



Circular and Temporary Migration

Empirical Evidence, Current Policy Practice and
Future Options in Germany

Research Study in the Framework of the
European Migration Network (EMN)

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Table of Contents

	Abbreviations	6
	Figures and Tables	7
	Summary	8
1	Introduction	10
	1.1 Methodology	12
	1.2 Definitions	14
2	Circular and Temporary Migration: Approaches and Experiences in Germany	20
	2.1 National visions, policies and programmes	20
	2.1.1 Social, labour market policy and economic positions	23
	2.1.2 Development policy positions	25
	2.1.3 The position of migration management	28
	2.2 National legislation, conditions and organisational enforcement	29
	2.2.1 Retrospective: circular migration and the recruitment of foreign workers	29
	2.2.2 Legislative framework for residence and nationality issues	31
	2.2.3 Basic principles of the laws governing employment of foreigners and social insurance	34
	2.2.4 Integration and return aspects	36
	2.3 Cooperation with third countries	39
	2.3.1 Temporary employment of contract and guest workers	40
	2.3.2 Placement and employment of seasonal workers and fair-ground helpers	42
	2.3.3 Mobility partnerships and bilateral agreements	43

	2.4	Approaches and perspectives for models of temporary and circular migration	45
	2.5	Approaches to and effects of a European policy for temporary and circular migration	48
3		Availability of Data in the Area of Circular and Temporary Migration	50
	3.1	Data from the Central Register of Foreign Nationals (AZR)	50
	3.2	Data of the Central Placement Office of the Federal Employment Agency	58
	3.3	Migration statistics as a potential data basis	59
4		Conclusions and Outlook	61
		Sources and Bibliography	65

Abbreviations

AZR	Ausländerzentralregister (Central Register of Foreign Nationals)
BAMF	Bundesamt für Migration und Flüchtlinge (Federal Office for Migration and Refugees)
BMAS	Bundesministerium für Arbeit und Soziales (Federal Ministry of Labour and Social Affairs)
BMELV	Bundesministerium für Ernährung, Landwirtschaft und Verbraucherschutz (Federal Ministry of Food, Agriculture and Consumer Protection)
BMI	Bundesministerium des Innern (Federal Ministry of the Interior)
BMZ	Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung (Federal Ministry for Economic Cooperation and Development)
BR-Drs.	Bundesratsdrucksache (Bundesrat Printed Paper)
BT-Drs.	Bundestagsdrucksache (Bundestag Printed Paper)
CDU	Christlich Demokratische Union Deutschlands (Christian Democratic Union of Germany)
CSU	Christlich-Soziale Union in Bayern (Christian Social Union in Bavaria)
EMN	European Migration Network
EU	European Union
FDP	Freie Demokratische Partei (Free Democratic Party)
GCIM	Global Commission on International Migration
IT	Information Technology
MME	Migration, Mobility and Employment
OSCE	Organisation for Security and Cooperation in Europe
REAG/GARP	Reintegration and Emigration for Asylum-Seekers in Germany/ Government Assisted Repatriation Programme
USA	United States of America

Figures and Tables

Figure 1:	Typology of circular migration according to Agunias and Newland	15
Table 1:	Circular migration by nationality (top 10, one or more exits)	53
Table 2:	Circular migration based on the main nationalities (top 10) and for specific periods	54
Table 3:	Circular migration by selected residence purposes (one or more exits)	55
Table 4:	Circular migration by age group and nationality (one exit)	56
Table 5:	Circular migration by gender	57
Table 6:	Employment or placement of contract, guest and seasonal workers, 2005-2009	59
Table 7:	International personnel exchange, 2006-2009	59

Summary

This study looks at the empirical findings, the legal preconditions, the political debate and the future options for action with regard to circular migration patterns and the temporary residence of migrants in Germany. It is an explorative comparative study outlining the central insights into circular and temporary migration into Germany as well as the legal framework, the relevant discussions and the political options.

The first step is to define "circular migration" and to distinguish it terminologically from other migration patterns such as return or temporary migration. We propose to view "circular migration" as multiple migration, in which a person enters the destination country at least once (or is born there), then moves to the country of origin, the country of nationality or a third country, and then returns to the destination country. The time-based dimension is also considered, although it is not possible to define an exact duration of stay. Short stays of just a few months are excluded as such stays do not generally involve a change in place of abode or principal residence. Neither should circular migration be used to describe the movements of people who have resided in the guest country for many years or even decades and who then (once and without returning) migrate back to their country of origin.

With regard to empirical insights, the findings of the study include the following:

- A not inconsiderable percentage of foreigners from third countries living in Germany can be viewed as circular migrants. Data from the Central Register of Foreign Nationals indicate that 10.7 percent of the some 4.3 million third-country nationals (non-EU citizens) living in Germany have already moved away from Germany at least once and subsequently returned. In the case of 2.6 percent of third-country nationals, emigration and re-immigration of this kind have taken place within the last five years. 2.3 percent of foreigners from non-EU states living in Germany have left Germany at least twice and have returned in the intervening period as well as at a later date.
- The degree of circularity varies considerably with regard to individual nationalities and in terms of the different purposes of residence in Germany. Based on the Central Register data, for example, we can see that foreigners holding a residence permit for the purpose of employment have been involved in circular migration to a greater degree than people who have come to Germany for other reasons – on family-related or humanitarian grounds, for example. It also appears to be the case that nationals of the former Yugoslavia and from Bosnia and Herzegovina "circulate" more frequently than, say, their counterparts from Russia or Turkey.

- Over half (51.7 percent) of third-country nationals residing in Germany who previously left Germany at least once are between the ages of 35 and 64, while 37.3 percent are between the ages of 18 and 34. In contrast, circular migration among children and youths below the age of 18 is on the low side.

With regard to the legal framework for circular and temporary migration, the findings of the study are as follows:

- The German laws on residence and nationality allow numerous forms of entry and residence for third-country nationals. Some parts of the legislation are geared towards temporary stays, while others are implicitly based on the assumption of permanent residence. In particular when it comes to temporary stays, Germany has for a number of decades been able to draw on proven instruments in areas such as seasonal employment, contract employees and guest workers.
- Circular forms of migration are generally made possible but only promoted indirectly at best. Only in recent years has the German legislative amended individual legal regulations to favour circular migration, one example of this being the new legal provisions on the expiry of residence titles following departure from Germany. It is fair to assume that the possibility of re-claiming the right of residence following a lengthy absence serves to make circular migration easier.

No definitive decision has yet been made in Germany as to whether, beyond this, circular migration should be promoted by special programmes or the creation and reinforcement of general incentives for circular migration. Based on analysis of the literature and on experiences in other EU states, however, we can identify various factors and developmental perspectives that facilitate circular migration from the point of view of migrants – such as the continued validity of residence titles following departure, the option of introducing multiple immigration visas or multiple residence titles and the expansion of mobility partnerships and bilateral agreements with third countries.

1 Introduction

A considerable part of today's cross-border migration movement does not culminate in permanent residence in a specific country. Regardless of whether we are talking about immigrants or temporary migrants, it will always be the case that the migration history of a significant percentage of migrants residing in a country like Germany has not been straightforward or linear (in the sense of one-time immigration followed by uninterrupted residence in line with the legal regulations).

Cross-border migration movements bear witness to drastic changes in the personal lives of the people concerned. The process of migration can create new opportunities but also entails risks. The risk of attempting migration is often also directly associated with the risk of failure. If the expectations that are linked to a migration process are inadequately fulfilled or not satisfied at all, then the goal of migration is not achieved and this can result in return or onward migration; it is not seldom the case that migration is synonymous with an attempt to face – or the tacit acceptance of – uncertainties. It is also the case, however, that the achievement of the goal of migration can logically result in further cross-border migration – if a student studying abroad successfully completes a degree course, for example. It is also possible that these graduates will make use of their new skills and knowledge in the labour market in their country of origin; it is equally conceivable that they will embark on a career in a third country. Alongside economic and career-based incentives, personal motives and relationships also play a key role in the form of family, partners or life environment. Then there are the factors that promote mobility and which have steadily improved in recent decades: this includes not only the ever-increasing freedom of movement (within the EU, for example, or due to the elimination of visa requirements) but also the expansion, acceleration and availability of both continental and intercontinental transport connections, particularly in the field of air travel. The improvements in access to information worldwide also play an important role in this connection. All this results in a situation in which high numbers of migrants move back and forth between two or even more countries.

The different patterns of “circular migration” we will be talking about in this study reflect the internationalisation and differentiation of working environments, demographic changes, novel mobility patterns and changing education and labour markets in a globalised economy. When planning their career paths, many migrants do not want to focus on a single country but want to dynamically exploit the opportunities offered by cross-border migration. In this process, circular, temporary or shuttle worker migration patterns have almost become second nature within the European Union, where the occurrence of medium-term residence periods followed by return or onward migration is on the increase not only due to freedom of movement but also and above all due to geographic proximity.

This is also one of the explanations for the increasing fluctuation of the workforce – often called the “loss of skilled labour” (cf. IOM 2010: 90).¹

It is important to distinguish this form of migration from the circular migration that takes place over large distances and includes passage through third countries. The political actors in the European Union and in the EU member states have recognised that circular migration can generate benefits both for the destination countries as well as for the countries of origin of the migrants: on the one hand, the EU needs new immigrants – not least in view of the demographic trend and the need for labour in certain sectors (cf. Parusel/Schneider 2010); at the same time, developing countries can also profit from circular migration if migrants re-invest the money they have earned abroad or make use of their acquired skills in their country of origin. In other words, circular migration could be advantageous not only for the countries in question but also for the migrants themselves. It was against this backdrop that the heads of state and government of the EU member states declared back in December 2006 that they would look for means and ways of facilitating circular and temporary migration.² The EU Commission then stated in a communication on “circular migration and mobility partnerships” dated May 2007 that circular migration options for migrants should be developed further. The Commission said that this can help the EU member states to “address their labour needs while exploiting potential positive impacts of migration on development and responding to the needs of countries of origin in terms of skill transfer and mitigating the impact of brain drain.”³

The five-year programme adopted in December 2009 for European policy development in the fields of freedom, security and justice (“Stockholm Programme”) also makes reference to circular migration. Among other things, it calls on the EU Commission to explore “ways to facilitate orderly circulation of migrants, either taking place within, or outside, the framework of specific projects or programmes”⁴ The Justice and Home Affairs Council of the EU put this aspect in more concrete form. The EU Commission and the member states have entered into a commitment to “to further examine issues which may have the potential to facilitate circular migration and voluntary return, such as portability of social rights, migrants’ opportunities to return to their countries of origin for longer periods of time without losing their right to residence in countries of destination as well as the promotion of viable livelihood options in countries of origin.”⁵

In Germany as well, the circularity of migration movements and potential political strategies to promote these kinds of migration patterns have been the focus of major attention in recent years, above all in the field of academic discourse and in expert circles.

1 cf. in this connection also the findings of Eurostat on mobility (levels of which vary by member state) of skilled personnel, for example, in the fields of science and technology (cf. Meri 2007) or students (cf. <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&init=1&language=en&pcode=tps00064&plugin=0>).

2 European Council (Brussels), 14/15 December 2006 (Doc. No. 16879/1/06 REV1), Presidency Conclusions, p. 9.

3 COM(2007) 248 final, p. 2.

4 Council of the European Union (2009): The Stockholm Programme – an Open and Secure Europe Serving and Protecting Citizens, Doc. No. 17024/09, Brussels, p. 62.

5 Council of the European Union (2009): Policy Coherence for Development: draft Council Conclusions on Migration for Development, Doc. No. 15806/09, Brussels, p. 3.

Whether and to what extent the overwhelmingly positive assessments of the relevant actors with regard to circular migration will culminate in a national policy approach geared towards the systematic promotion of these kinds of migration patterns is not clear at the present time. One of the main challenges is to reconcile the labour policy needs of an export-driven national economy active in a fierce international competitive environment with development policy standpoints and the goal of controlling and monitoring international migration movements. There are also other questions that need to be answered – for example, whether circular migration should be made possible or promoted within the context of special projects or programmes focusing on specific countries of origin or occupational groups or whether the aim should be to facilitate circular migration overall through non-group-specific incentives.

This report is the German contribution to a comparative study within the framework of the European Migration Network (EMN). The aim is to further the European debate on circular und temporary migration and to support policy development by the EU organs by providing information on attitudes, insights and strategies of national political actors in the various member states with regard to these migration patterns.

1.1 Methodology

On both national and international level, there is plenty of room for improvement when it comes to the general status of data and information on circular migration. In particular, there is only a low volume of empirically supported research on the topic that extends beyond case studies on specific migrant groups in specific countries or specific programmes for circular migration (cf. IOM 2009, for example). What is also lacking is a common definition-based understanding and a clear use of the relevant concepts and terminology. The concept of circular or temporary migration does not officially exist – either in German law or administrative practice or in the registration and migration statistics; there are no instruments and techniques for the measurement of the extent of the corresponding migration patterns; and no programmes or initiatives have been established to date for the promotion of circular migration.

This study is therefore of an explorative, fundamental character and is based on various sources. In preparation for the 2010 EMN work programme, the national EMN contact point at the Federal Office for Migration and Refugees staged a workshop on the topic of temporary migration back in October 2009. The workshop was attended by experts from the worlds of science and administration – including the German Institute for International and Security Affairs, the Hamburg Institute for Social Research, the Swiss Federal Office for Migration and the German Interior Ministry. The workshop participants discussed definition-related issues as well as socioethical and legal aspects of concepts to manage circular migration and the potential development-promoting effects of these concepts on third countries. The insights gained during the workshop have been incorporated at various points in the research work for the study.

In addition to the (extremely limited) relevant scientific literature on circular and temporary migration in Germany, we have also drawn on updated research findings from

international studies and reports. The research literature proved to be helpful, particularly with regard to formulating the clear-cut definitions required not least for the collection of statistical data; in this connection, we also made use of the conceptual statements on circular migration in various policy documents of the European Commission.

One of the central aims of the study is to illustrate the effects of the existing legal framework governing residence rights and employment of foreigners on potential circular and temporary forms of migration. We therefore take the primary legal sources – such as the German Residence Act and the resulting practice – into consideration. In this process, we were able to draw on other publications of the Federal Office, such as the 2008 Migration Report (BMI/BAMF 2010a) and the studies conducted for the EMN on “Organisation of Asylum and Migration Policy in Germany” (Schneider 2009) and on “Satisfying Labour Demand through Migration” (Parusel/Schneider 2010).

Data sources

There are still no comprehensive official statistics on temporary and circular migration. For the purposes of this study, we identified the Central Register of Foreign Nationals as the most suitable source of data. As a person-based register, the Central Register has since 2005 also provided the option of accessing partially historical data. In other words, it contains not only updated information on new incoming migrants and foreigners who are resident in Germany on the cut-off date of the survey but also, for example, information on previous stays of these people if they have left Germany one or more times in the intervening period as well as the legal basis and the purpose of these previous stays. It also provides the corresponding information on foreigners who were not resident in Germany on the cut-off date (i.e. who departed for another country following one or more stays in Germany). This means that the Central Register basically enables us to depict multiple departures of the kind covered by the term “circular migration”. What it does not supply, however, is information on the country of destination of the migrants leaving Germany. The relevant parameter stored in the Central Register is “Move to another country”, although it can be assumed in the majority of cases that the country concerned is the country of nationality of the foreigner in question. A further limitation is that short stays are not recorded, as the Central Register only documents foreign nationals who remain in Germany “not just temporarily” (which generally means three months or more). As a result, certain groups of people who exhibit temporary or, under certain circumstances, even circular migration patterns are not always registered.

The statistics of the Federal Employment Agency were a further source of data. The Agency’s International Placement Service regularly publishes figures on the admission proceedings for various immigration factors that permit temporary residence in Germany (temporary migration as defined by the study). These include, for example, foreign home helps, seasonal workers or contract workers. However, the figures of the Federal Employment Agency are limited to a small number of special categories in the field of labour migration and do not generally allow us to draw any conclusions as to whether the people in question enter and leave Germany more than once (circular migration as defined by the study; see Section 1.2).

A third source of information for the measurement of arrivals and departures of foreigners can be found in the migration statistics of the Federal Statistical Office. These statistics are based on the registrations and deregistrations for primary or sole place of residence documented by the registration authorities across municipal borders. The regional statistical offices evaluate the registration certificates from the registration offices and report their findings to the Federal Statistical Office. The registration offices record a variety of data, including details of age, gender, family status and nationality as well as region of origin and destination region of the people registering or deregistering. When an amendment of the Population Statistics Act came into effect on August 1, 2008, the data supplied by the registration authorities to the statistical offices was supplemented by the parameters “place of birth” and “country of birth” as well as – in the case of people coming to Germany from abroad – “date of departure from Germany to another country prior to the current entry into Germany.”⁶ Documenting the date of departure could pave the way for conclusions regarding circular migration movements. At the current time, however, it is not possible to reliably analyse the newly introduced parameter “departure date”. We do not expect any dependable insights until the 2010 reporting year at the earliest.

1.2 Definitions

The problem of the statistical measurement of circular and temporary migration movements is closely connected to questions of definition. What are the characteristic features of circular migration? In which cases should migration be described as temporary migration? Or when is this migration return or shuttle migration? When we talk of circular migration, we first need to distinguish whether we are talking about a policy goal, in other words, a political programme to promote circular migration patterns, or about the statistical description of cross-border migration realities.

Circular migration as an empirical phenomenon

In the scientific research, the concept is primarily used in the typology of existing migration movements. Here, circular migration is not seen as a new phenomenon occurring within the framework of organised and controlled processes but as a description of spontaneous and uncontrolled patterns of rotating migration which is also of a circular nature without specially created programmes and political and legal control mechanisms; the talk is also of “de facto circular migration” (Newland 2009a: 15 et seq.). Fakhoury (2009: 453) describes the resulting divide between the normative and empirical aspects of circular migration. Yet there are even differences in the way this concept is used in the scientific field. Alongside broadly based interpretations in which one-time migration followed by return to the country of origin or home country (regardless of the time dimension) is described as circular migration, there are also narrower definitions tied to specific criteria and legal prerequisites. The typology of circular migration put forward by Agunias and Newland (2007) can serve as an example for a more comprehensive approach. The authors distinguish between permanent and temporary migration as well as between temporary and permanent return (Fig. 1). Migration is assumed to be permanent if there is a permanent right of residence or if the migrant has adopted the nationality of the admitting country. This results in four types of circular migration:

6 cf. Section 4 No. 5 Population Statistics Act; see also Mundil/Grobecker 2010: 616f.

Figure 1: Typology of circular migration according to Agunias and Newland

	Permanent migration	Temporary migration
Permanent return	Migrants who spend a lengthy period abroad and then return to and stay in their country of origin.	Migrants who only stay abroad for a short period and then return for good.
Temporary return	Migrants who have emigrated for good but who return for temporary stays.	Migrants who regularly shuttle between two or more countries.

Source: Own depiction based on Agunias/Newland 2007: 4

Based on the definition of Agunias and Newland, however, the majority of all cross-border migration movements would be categorised as one of the four types of circular migration. This contrasts with the more narrow definition model of Fargues (2008), according to which migration that meets six criteria can be characterised as circular:

1. temporary residence (time-limited permit)
2. renewal option (possibility of multiple entry into the destination country)
3. circularity (freedom of movement between country of origin and destination can be exercised without restriction during the period of residence)
4. legality of stay
5. protection of migrants' rights
6. satisfaction of a (temporary) demand for labour in the destination country as a central purpose

Fargues says that further criteria which would above all establish the connection with developmental aspects (e.g. improvement of the job-related skills of the migrants, improved skill and knowledge transfer to the countries of origin, mitigation of the negative impact of brain drain) might be conceivable but difficult to assess (cf. Fargues 2008: 2). This approach appears to be too narrow to cover all the potentially existing forms of circular migration. In addition, it contains numerous normative components. From an empirical point of view, there is firstly a migration pattern that is also circular and that is not primarily geared towards the goal of employment or satisfying labour needs but that takes place for, say, family-related reasons or that entails a change in the reason for residence. Secondly, people who are in a country illegally can also circulate; in this latter case, however, the criteria of renewal option, freedom of movement and protection of rights are not satisfied – and it goes without saying that there is no reliable means of statistically measuring circular migration movements of irregular migrants.

Circular migration as a political programme

Programmes for circular migration launched by national governments are typically geared towards achieving specific political objectives in the area of “migration management”. However, these objectives do not necessarily correspond to the individual expectations or needs of the migrants in question (cf. Newland 2009a: 20). In the European Union, the more recent debates on circular migration are based on differing assumptions. It can be seen from policy documents of the EU Commission that circular migration is primarily understood as a migration phenomenon that should be promoted through the creation or expansion of a specific legal framework as well as via specific projects or programmes. Cir-

cular migration is viewed as multiple migration between country of origin and admitting country – within the context of the time-limited employment of workers participating in migration programmes, for example. For the Commission, the advantages of circular migration movements lie above all in the transfer of skills between the countries in question and in the reduction of the permanent outflow of knowledge and skills from developing countries (“brain drain”). In its communication on “circular migration and mobility partnerships” dated May 2007, the Commission states with regard to possible political measures:

“Circular migration is increasingly being recognised as a key form of migration that, if well managed, can help to match the international supply of and demand for labour, thereby contributing to a more efficient allocation of available resources and to economic growth. (...) A distinction could be drawn between, on the one hand, putting in place the legislative framework that would facilitate circular migration and, on the other, the possibility of developing circular migration schemes. Such schemes would enable migrants to enter the EU to work, study or perform other activities for a set period of time.”⁷

It is, however, noted that there are different definitions and forms of circular migration and that the European Union must clearly stipulate which form of circular migration it intends to facilitate. The communication says that circular migration can be “defined as a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries.” With regard to third-country nationals, it goes on to say that circular migration already exists if people residing abroad receive an immigration and residence permit for a limited period of time for the purpose of working, studying and/or training, provided that they relocate their main place of residence and their main sphere of activity back to their country of origin once their permit has expired. On the other hand, it also talks of “increased” circular migration and says this can be promoted

“by giving migrants the possibility, once they have returned, to retain some form of privileged mobility to and from the Member States where they were formerly residing, for example in the form of simplified admission/re-entry procedures.”⁸

Based on the statements issued by the Commission, the Justice and Home Affairs Council of the EU has agreed on the following wording for a basic definition. According to this definition,

“circular migration could be understood as the temporary, legal movement of people between one or more member states and particular third countries, whereby third country nationals take up legal employment opportunities in the EU or persons legally residing in the EU go to their country of origin.”⁹

7 COM(2007) 248 final, p. 8.

8 COM(2007) 248 final, p. 9.

9 Communication of the Justice and Home Affairs Council to the press, Brussels, December 6 and 7, 2007, 15966/07 (Press 275), p. 13.

The German government also sees its attitudes mirrored in the description of circular migration in the communication of the European Commission.¹⁰ In contrast, the Swedish government set up a parliamentary committee in July 2009 in order to investigate the relationship between circular migration and development. In its first report, the committee says it is not the job of politics to introduce special programmes to promote circular migration and that, instead, the aim should be to promote “spontaneous circular migration” – in other words, forms of migration that are circular and undertaken by migrants on their own initiative independently of government schemes:

“The Committee is of the view that it is spontaneous circular migration in contrast to the managed form that takes place within programmes and projects which is the form the Committee is to promote.” (SOU 2010: 34)

In its very first interim report, the Swedish parliamentary committee proposed a number of measures that might positively influence the decision of migrants to engage in circular migration (also see Section 4). The European Parliament has also spoken out in favour of supporting the concept of rotating residence in the countries of origin and destination on account of the anticipated benefits for both countries (cf. Angenendt 2007: 2).

In Germany and France, circular migration was initially understood at governmental level less as a sort of spontaneous migration process that should or should not be promoted and more as an instrument of control. When the then German and French Interior Ministers, Wolfgang Schäuble and Nicolas Sarkozy, presented a strategy paper on this issue in autumn 2006, they emphasised the function of circular migration as a “migration and development policy instrument” for the “admission of working migrants for limited periods” or the “granting of temporary education visas to selected migrants” (see Section 2.1).

Various international organisations and bodies as well as researchers have expressed their belief that these forms of migration should be promoted. The Global Commission on International Migration (GCIM) set up in 2003 by the Secretary General of the United Nations and the governments of Sweden, Switzerland, Brazil, Morocco and the Philippines, for example, called on nations to look into the options for circular migration and “carefully designed temporary migration programmes” (GCIM 2005: 16). The final report of the Commission says:

“States and international organisations should formulate policies and programmes that maximise the developmental impact of return and circular migration.” (GCIM 2005: 31)

Zapata-Barrero et al. (2009: 4) state that this perspective is a result of the combination of the anticipated positive threefold effects of circular migration for the country of origin, the accepting country and the workers engaged in circulatory migration – and call this a “triple-win situation” (cf. also Agunias 2006: 27; Ruhs 2005: 1). They say that the current debate on circularity therefore needs to progress from mere observations to the institutionalisation of circular migration as a migration category and a policy field (Zapata-Barrero et al. 2009: 7).

10 BT-Drs. (Bundestag Printed Paper) 17/3561 dated October 28, 2010, p. 8.

Working definitions

In Germany, there are still no firmly established definitions of circular migration; however, the legislation governing residence and employment of foreigners refers to “seasonal” or “temporary” forms of residence. There are various existing admission procedures that define a maximum period of stay for a foreign worker. In the case of seasonal workers, this period is six months per calendar year, for example, with durations of 18 months for guest workers, two years for contract workers, three years for home helps and also three years for international personnel exchange (see Sections 2.2.2 and 2.2.3 for more details). This means we can basically use the definition in the EMN Glossary¹¹ (cf. EMN 2010: 104). As some of the aforementioned temporary procedures also permit multiple, consecutive employment stays, this results in fluid transitions to de facto circular migration.¹²

In line with the specifications of this study, the term “circular migration” is particularly suitable in connection with a “back-and-forth” movement between an EU member state and the country of origin facilitated by measures such as simplified admission and re-entry procedures; temporary migration, on the other hand, is more about a single migration movement (entry and return) and a time-limited stay.¹³

Booth et al. (2002: 182) describe a definitory framework that proves useful for terminological differentiation between temporary migrants and seasonal workers: they say that some forms of temporary employment are restricted to certain seasons or events (e.g. harvest or holiday jobs) that clearly characterise them as seasonal employment. They go on to say that in the case of other forms of employment in which time limitations are not solely determined by the presence of work that needs to be done, the temporary character is the result of a central feature of the work contract – namely its predetermined duration.

If we describe circular migration as a flexible form of repetitive movement between different destinations (cf. Fakhoury 2009: 451), this definition excludes “one-time” migration with subsequent return – regardless of the length of stay; i.e. people who came to the country for the purpose of employment and returned to their country of origin after ten or more years without subsequently returning to the guest country (return migration) and people who enter the country once for a pre-determined period stipulated in a work contract and then leave again (temporary migrants) would not be described as circular migrants.

11 “Migration for a specific motivation and/or purpose with the intention that afterwards there will be a return to country of origin or onward movement.”

12 In some cases, it is legally stipulated that a worker must spend a certain minimum period abroad after leaving Germany before he or she can once again take up employment in Germany. In the case of contract workers, for example, Section 39 of the Employment Ordinance rules that the Federal Employment Agency may only issue a new approval if the period between departure and re-entry within the framework of work contracts is no shorter than the total period of validity of earlier residence titles. The minimum stay in another country is two years, however, cf. Section 39 Para. 1, 3rd and 4th sentences Employment Ordinance.

13 cf. European Migration Network, Specifications for EMN Study “Temporary and Circular Migration: Empirical Evidence, Current Policy Practice and Future Options in EU Member States”, final version of March 22, 2010.

Within the framework of this study, one of the aims was to review the migration data in order to determine to what extent this data is suitable for the depiction of circular forms of migration. We therefore made various assumptions in order to identify potential groups of circular migrants (see Section 3 for more details). This allows us to formulate a “graduated” working definition of circular migration:

- First, all the people with third-country nationality residing in Germany at a cut-off date who previously left Germany once and who therefore completed a total of three cross-border moves (two if they were born in Germany) are to be identified.
- In a second step, the aim is to identify all those people who left Germany two or more times, i.e. who completed at least five (if born in Germany: four) cross-border moves.
- The third step is to incorporate a time-based dimension by differentiating those resident third-country nationals who left the country at least once during the last three or five years as well as those who left the country at least twice during the last five years before the cut-off date.

Due to the lack of established definitions and methods for the collection of statistical data on circular migration, this process was roughly based on a small number of available approaches that have been used in the past for the measurement of circular or shuttle migration. Constant and Zimmermann (2007), for example, attempted to establish the occurrence and determinants of circular migration from selected countries of origin to Germany based on the German Socioeconomic Panel (SOEP). To this end, they selected a random sample of over 4,600 migrants from the 14 survey waves between 1984 and 1997 and registered, among other things, the number of migrants who had left Germany in the meantime. They also calculated the overall duration of absence. However, they only documented migrants from the so-called guest worker countries – Italy, Greece, Spain, ex-Yugoslavia and Turkey. Their findings showed that 62 percent of migrants had already left Germany again at least once and that the average absence was in the order of five years (cf. Constant/Zimmermann 2007: 7, 10, 21).

The parliamentary committee on the topic of circular migration in Sweden mentioned earlier also chose the number of cross-border moves between Sweden and other countries as a criterion for circular migration. In the first interim report of the committee, a distinction was made between people who made cross-border moves three times, five times or seven and more times (cf. SOU 2010: 35, 67).

Finally, the graduated working definition of circular migration chosen for this study is in keeping with ideas considered within the framework of a research project recently launched at the European University Institute (cf. Triandafyllidou 2010 on the METOIKOS project). This project uses four dimensions to define circular migration: “space”, “time”, “repetition” and “scope”. The spatial dimension follows a cross-border approach and focuses on border crossings. In terms of time, circular migration indicates stays of limited duration that can vary from several weeks to several years but does not apply to stays of a decade and more. With regard to repetition, the author specifies at least two-time back-and-forth movement between country of origin and country of destination as the minimum require-

ment for circular migration (Triandafyllidou 2010: 15). The scope of circular migration does not refer exclusively to dependent employment but primarily to economic activities (employment, trade, investment etc.). The author says that, although social and cultural aspects are also part of the process, circular migration is always characterised by economic motives (ibid.).

2 Circular and Temporary Migration: Approaches and Experiences in Germany

2.1 National visions, policies and programmes

The enactment of the Immigration Act on January 1, 2005 was geared towards more effective control of immigration into Germany and adjusting immigration to the needs of the German economy, the conditions on the labour market and the goal of fighting unemployment. The Residence Act (Aufenthaltsgesetz), which together with the “Freedom of Movement Act (Freizügigkeitsgesetz/EU)” forms the centrepiece of the new immigration legislation, primarily provides for four residence purposes for immigrants from third countries: education (Part 3 Residence Act), economic activity (Part 4 Residence Act), stays on grounds relating to international law or stays for humanitarian or political reasons (Part 5 Residence Act) as well as stays for family reasons (Part 6 Residence Act). Some highly specific residence entitlements are also outlined outside these categories (Part 7 Residence Act). The various parts stipulate in detail on what basis and under what conditions third-country nationals can obtain a residence title. To date, the legislative has not laid out any special provisions to facilitate or promote circular migration patterns. Neither does the current German coalition government made up of CDU, CSU and FDP intend to implement any systematic measures or programmes to promote circular or temporary migration.

At the same time, it must be stated that, for a number of years now, the legislation on residence and employment of foreigners has permitted certain forms of migration that are of temporary character and that also promote circular migration in the sense of multiple migration movements, in particular within the context of legal regulations on the management of labour migration. Castles (2006) notes that, compared to other European countries, Germany makes particularly widespread use of “Temporary Migrant Workers Programmes” (TMWPs). By way of example, he cites bilateral placement agreements with Central and Eastern European countries on the employment of seasonal workers and fairground helpers and showmen’s assistants in Germany, employment opportunities for foreign contract workers and other programmes like those for cross-border commuters or care workers (Castles 2006: 750). In the opinion of the German government, however, these are not programmes aimed at promoting circular or temporary migration but measures to meet

specific labour needs occurring at short notice in Germany. The aim is also to open employment corridors in order to relieve migration pressure and to help to improve the social situation in the partner states. Some programmes of this kind date back to the early 1990s and earlier, and when they were introduced all those years ago they already combined German economic and labour market policy objectives with the goal of migration control and ideas relating to the social situation of the people in the partner states and the economic and social development of these countries. Today, Germany is also involved in mobility partnerships with third countries and in the international dialogue on migration questions – and circular migration is often one of the topics on the agenda. Sections 2.2 and 2.3 take a closer look at these aspects.

In the autumn of 2006, circular migration – understood as a concept or programme for controlled migration movements – aroused public interest when the German and French Interior Ministers of the time, Wolfgang Schäuble and Nicolas Sarkozy, published a joint strategy paper calling for closer cooperation between the EU member states in controlling legal migration and, in this connection, underlining the role of circular migration as a “migration and development policy instrument”. The potential elements of this instrument outlined in the paper included “labour migration quotas for specific occupations”, the admission of “time-limited work migrants” and the “allocation of temporary education visas to selected migrants”. It was emphasised that a key factor in the success of such a concept would be the voluntary return of the circular or temporary migrants to their countries of origin following their stay in the EU. The Ministers said that supporting returnees in their occupational re-integration in their country of origin could have a positive effect on the development of the home countries.¹⁴

As part of the “Global Approach to Migration” adopted by the European Council in December 2005, the core idea of the German-French initiative – partnerships between EU states and the countries of origin and transit states of migrants – was incorporated in the conclusions of the European Council dated December 2006, which stated that these partnerships should help to forge a stronger link between migration and development policy.¹⁵ Then, in May 2007, the EU Commission published a communication on “circular migration and mobility partnerships between the European Union and third countries”¹⁶, in which it for the first time outlined concrete potential steps to promote circular migration as well as possible agreements between EU member states and third countries to effectively manage migration movements (cf. Parusel 2010: 215-217). During the same period, the debate on these issues within Germany showed a tendency to tail off. In expert circles and in the world of politics, the initiative begun by former Interior Ministers Schäuble and Sarkozy was sometimes met with scepticism if not outright rejection. One of the main criticisms was that the German-French concept was geared more towards stricter control of migration flows together with a reduction in illegal immigration through time-limited migration pro-

14 Source: unpublished manuscript entitled “Deutsch-Französische Initiative für eine neue Europäische Migrationspolitik” (German-French initiative for a new European migration policy), no place or date, see also Angenendt 2007: 1.

15 Council of the European Union, Brussels European Council, 14/15 December 2006, Presidency Conclusions.

16 COM(2007) 248 final.

grammes than towards promoting development in the countries of origin (cf. Angenendt 2007: 2, for example). Some commentators also warned against a re-introduction of the guest worker programmes (cf. Castles 2007; Parusel 2010: 220). A further subject of discussion was the question of how to ensure the return of migrants who might come to Germany within the framework of temporary or circular programmes and whether it is a good idea to deny people with circular migration behaviour the right to reside in Germany for a longer period of time even if they wish to do so. The German government made it clear that it believes circular migration is “fundamentally incompatible” with the possibility of a “consolidation of residence” in the admitting country – and went on to say that the return of circular migrants should be secured in cooperation with the countries of origin in order to underpin the developmental objective.¹⁷

In June 2008, the EU Commission reported the signing of mobility partnerships between EU states and the Republic of Moldova and Cape Verde (see Section 2.3.3). 15 EU member states including Germany are party to the partnership with the Republic of Moldova¹⁸, while four EU countries are involved in the partnership with Cape Verde.¹⁹ A further mobility partnership was agreed with Georgia on November 30, 2009, and Germany is also one of the 16 EU members in this partnership.²⁰

On a bilateral front, the German government is also interested in a migration agreement with the Republic of Ghana providing for structured and generally temporary economic and work migration. The scope of economic and work migration from Ghana is to depend on the scope of return of Ghanaian nationals obliged to leave Germany (see Section 2.3.3).²¹

At the workshop on circular migration staged by the National EMN Contact Point on October 5, 2009 in Nuremberg (see Section 1.1), several experts spoke in favour of facilitating or promoting these forms of migration. It was pointed out, however, that the main thrust of government policy in this respect was still not clear – in other words, whether the aim was to promote development in the countries of origin, to create economic benefits for the admitting society or to improve the life and career prospects of the migrants themselves. In addition, it was predicted that the end of the economic crisis in 2009 would result in an increased international demand for immigrant labour, a scenario in which countries with functional concepts for circular and temporary migration would be at an advantage. Several workshop participants argued that programmes to promote circular migration should be based on the principles of fairness towards migrants and voluntariness – and that migrants should not be treated as mere temporary workers without any prospect of integration.²²

17 cf. BT-Drs. 16/4134, p. 8 (response of Parliamentary State Secretary Peter Altmaier on January 22, 2007).

18 As well as Bulgaria, France, Greece, Italy, Lithuania, Poland, Portugal, Romania, Sweden, Slovakia, Slovenia, Czech Republic, Hungary and Cyprus.

19 France, Luxembourg, Portugal and Spain.

20 As well as Belgium, Bulgaria, Denmark, Estonia, France, United Kingdom, Greece, Italy, Latvia, Lithuania, Netherlands, Poland, Romania, Czech Republic and Sweden.

21 cf. BT-Drs. 17/848, p. 2.

22 A report on the workshop was published in the newsletter EU-Ius-News no. 10/2009, p. 11-13. <http://www.bamf.de>.

The following sections will outline the potential social, labour market policy, economic and development policy dimensions of circular and temporary migration and describe how this form of migration can support the national interest of achieving controllable and manageable immigration. The positions of key actors and stakeholders will also be explained.

2.1.1 Social, labour market policy and economic positions

Positions of the German government

The 2005 Immigration Act was reformed by the “Directive Implementation Act” that came into force on August 28, 2007. One aspect of this reform that was of particular significance for labour migration was the introduction of a special residence title for researchers as well as mobility rules for students admitted in another member state based on guidelines issued by the European Union. At the same time, the German cabinet agreed that there could be additional needs in the segment of highly qualified labour in both the short and long term even if the domestic potential for qualification is fully exploited. The cabinet decided to optimise labour market-focused control of migration for highly qualified personnel in order to further strengthen Germany’s position in the “competition to attract the best” (“Wettbewerb um die Besten”, see Bundesregierung 2009: 50).

This decision was enacted through the Ordinance on the Access of Foreign University Graduates to the Labour Market.²³ Then, in 2008, an action programme entitled “Contribution of Labour Migration to Secure the Skilled Labour Pool in Germany” was implemented. The aim of this programme was to make Germany a more attractive destination for highly qualified individuals. In light of the demographic trend, globalisation and the structural shift in the economy towards knowledge-focused and research-intensive industries and services, the German government of the time (November 2005 to October 2009) assumed that it would become increasingly difficult to meet labour market needs – in particular the demand for skilled and highly qualified personnel – from the potential existing labour pool in Germany and that the international competition for highly qualified personnel would become increasingly fierce. The idea, therefore, was to create more attractive immigration regulations in order to strengthen Germany’s position in the international arena (cf. BMI/BMAS 2008: 1).²⁴ It should be noted that it was not the intention of the action programme to introduce new schemes for temporary or circular migration. Implementation of the action programme took the form of legal amendments to the Residence Act through the “Labour Migration Control Act” as well as through new ordinances governing the employment of foreigners.

With regard to the labour market, the current German government intends to achieve the goal of meeting the existing and predicted rising need for skilled personnel primarily through increased further training and development, increasing the percentage of

23 Ordinance on the Access of Foreign University Graduates to the Labour Market dated October 9, 2007, BGBl. I (Federal Law Gazette Volume I), p. 2337. This ordinance was revoked as of January 1, 2009 and incorporated in the amended Employment Ordinance/Employment Procedures Regulation.

24 Within the framework of national and European migration policy, the German government also intends to support measures to ensure that the desired immigration is not to the disadvantage of the developing countries. The government says it will not systematically headhunt specialists from sectors where there is a shortage of these specialists in the developing countries (cf. BMI/BMAS 2008: 1).

women and older people in employment and promoting the acquisition of qualifications by persons with a migration background who already live in Germany (cf. Parusel/Schneider 2010). In the coalition agreement signed on October 26, 2009 the governing CDU, CSU and FDP parties declared their intention to make Germany even more attractive for highly qualified people, to control migration and to reduce the amount of red tape faced by qualified labour.²⁵ The coalition agreement makes no reference to circular migration. The Federal Ministry of Labour and Social Affairs tends to take a critical view of the idea of increasing the extent to which immigration is used as a means of meeting the labour needs of the German economy. Models of circular migration have also been rejected in the past (cf. Benedetter/Schira 2009: 184-186).

Positions of associations and organisations

The German Confederation of Trade Unions is sceptical with regard to the potential positive effects of circular migration programmes on the labour market. The Confederation says that the concept outlined in the communication of the EU Commission in May 2007 indicates that such schemes would appeal more to less well-qualified people from third countries than to well-qualified and highly qualified individuals. The Confederation sees this as a problem, arguing that, in view of the high number of unemployed people in Germany who are classified as poorly qualified, the EU concept does not represent a viable alternative and that German policy-makers and industry must create a greater range of qualification options and apprenticeship places for the German labour pool. In addition, the Confederation is afraid that temporary and circular migrants might be refused socioeconomic rights due to their time-limited stay in Germany: “The German Confederation of Trade Unions fears that labour migrants will remain without rights and will be dependent on their employer, resulting in a justified fear of exploitation and instrumentalisation.”²⁶ However, the Confederation believes that temporary migration could well be an option within the framework of an overall European migration policy concept. It says that one of the preconditions for this is that such a concept takes account of long-term labour market policy developments in the EU and that employee rights must be fully extended to labour migrants. In addition, the Confederation believes that temporarily resident labour migrants should also be able to take advantage of integration courses and qualification measures.

The industry and employer associations have no firm view on programmes or measures that facilitate circular migration. They are, however, basically in favour of flexible forms of worker migration that can benefit companies and migrants in equal measure. In its statement on initial experiences with the application of the Immigration Act, for example, the Association of German Chambers of Industry and Commerce voiced its support for measures to substantially facilitate the cross-border exchange of personnel as well as for the

25 cf. “Growth. Education. Unity”, coalition agreement between CDU, CSU and FDP, 17th legislative period, p. 22f.

26 German Confederation of Trade Unions, Federal Presidium, “Arbeitsmaterialien zur Migrationspolitik: Beschluss des Bundesvorstands des DGB vom 2. September 2008, Stellungnahme zum Konzept der Europäischen Kommission: Zirkuläre Migration und Mobilitätspartnerschaften zwischen der Europäischen Union und Drittstaaten, KOM(2007) 248 endg.” (work materials on migration policy: decision of the Federal Presidium of the German Confederation of Trade Unions dated September 2, 2008, statement on the concept of the European Commission: Circular Migration and Mobility Partnerships between the European Union and Third Countries, COM(2007) 248 final), Berlin, September 23, 2008 (own translation).

employment of foreign seasonal workers and contract workers.²⁷ At a specialist conference on circular migration, Peter Clever, one of the Managing Directors of the Confederation of German Employer Organisations (BDA), called for greater composure and confidence in the area of migration policy. He said that as long as companies ensure that there is no burden on the state, industry should be able to decide who works where; he added that compulsory departure after a predetermined period of residence was no longer in keeping with the times and that return options need to be created when migrants return to their countries of origin.²⁸

From an economic perspective, the primary goal of circular migration is to increase worker mobility in order to tap into productivity and efficiency reserves and to connect migration movements to jobs that become available on the free market; the labour market acts as a filter for (and a driver of) migration. The basic principle in this perspective is that there should be a right or at least a legal option for migrants to return to the previous guest country following onward or return migration (cf. Zimmermann 2009: 28).

The reality of temporary, circular and shuttle migration patterns, which has sometimes resulted in precarious situations for temporary migrants with regard to employee and social insurance rights or healthcare, has resulted in a call from bodies including the German Institute for Human Rights for the creation of certain conditions for these forms of labour migration in a joint European framework in order to protect fundamental rights (cf. Follmar-Otto 2007).

2.1.2 Development policy positions

Alongside social, labour market policy and economic positions, there are also development policy positions that play an important role in the debate on circular migration. In the strategy paper mentioned further above, for example, former Interior Ministers Schäuble and Sarkozy said that the instrument of circular migration should be used to reinforce the positive developmental effect on the countries of origin – based on the assumption that the occupational integration of circular migrants in their countries of origin would also play an important role in underpinning this effect.²⁹

In the field of German development cooperation, an activity that is coordinated on governmental level by the Ministry for Economic Cooperation and Development (BMZ), the effects of international migration movements on development processes have been increasingly identified as an important field of action in recent years. Among other things, it

27 Statement by the Association of German Chambers of Industry and Commerce on “Erfahrungen bei der Anwendung des Zuwanderungsgesetzes für den Zeitraum vom 1. Januar bis 31. Dezember 2005” (experiences with the application of the Immigration Act during the period from January 1 to December 31, 2005), Berlin, March 21, 2006.

28 Statement by Peter Clever at the special-topic United Nations Association of Germany (DGVN) conference entitled “Zirkuläre Migration – neue ‘Gastarbeiterpolitik’ oder Entwicklungszusammenarbeit?” (circular migration – new “guest worker policy” or development cooperation?), Berlin, December 2, 2008 (cf. documentation of the DGVN and the European institute for healthcare research and social economy) (http://www.dgvn.de/news.html?&no_cache=1&tx_ttnews%5Btt_news%5D=132&cHash=ee65675223044920840d1cc46e4bf185).

29 Source: unpublished manuscript entitled “Deutsch-Französische Initiative für eine neue Europäische Migrationspolitik” (German-French initiative for a new European migration policy), no place or date, see also Angenendt 2007: 1.

is now recognised that emigration not only creates disadvantages for the countries of origin due to a loss of know-how but that migration processes can also result in positive developmental effects that outweigh the drawbacks. The Ministry has identified several elements which would increase the extent to which these positive effects are utilised; they include remittances by migrants from the admitting states to family members in the countries of origin³⁰, non-profit and private business commitments of diaspora communities³¹ in their original home countries and the potential contributions that can be made by returning migrants who use the knowledge, capital, network contacts and cultural skills they have acquired abroad to promote the development of their own countries (cf. BMZ 2010: 6-7). In the words of the Ministry:

“Migration can have a positive or negative impact on the migrants themselves, on the countries of origin of the migrants and on the destination countries. We know from experience that successful migration management creates a situation in which the potentials greatly outweigh the risks.” (BMZ 2010: 8, own translation)

The concept of circular migration is also in line with these considerations of the Ministry for Economic Cooperation and Development, in particular with regard to reducing the “brain drain” or promoting “brain circulation”:

“If migrants maintain close contact with their country of origin, then emigration can represent a major opportunity for the society and economy of their home country – above all if consecutive life phases are possible in both countries. Circular migration allows migrants to interrupt their stay in the destination country and return to their home country for a certain period of time. As a result, they take the knowledge they have acquired abroad back with them and are able to shuttle between these two economic and cultural regions.” (BMZ 2010: 12, own translation)

In the view of the Ministry, better integration of migrants in the German and European labour markets (including recognition of educational qualifications and vocational skills) is necessary in order to ensure more systematic exploitation of the development policy potential of circular migration.³²

30 According to Eurostat, foreigners engaged in economic activity and resident in Germany transferred a total 3,122 million euros to family members in their countries of origin in 2008. The lion's share of this capital went to non-EU states (2,122 million euros). The corresponding (preliminary) figures listed for 2009 are 2,996 million and 2,020 million euros. In 2008, the main recipient country for remittances from Germany was Turkey with 818 million euros, cf. on this Comini/Faes-Cannito 2010: 2-3. The Ministry for Economic Cooperation and Development (BMZ) calculates that these international remittances add up to twice the volume of official funding under the development cooperation programme (cf. BMZ 2010: 6).

31 The term “diaspora” is extremely wide-ranging and comprises various forms of social organisation – from individual and family relationships through to organised strategies for economic, political or social activity, cf. BMI/BAMF 2010a: 231-232; Baraulina/Borchers 2008.

32 For information on the recognition of foreign qualifications in Germany, also see Parusel/Schneider 2010: 43-47.

In addition, it is hoped that the following instruments of German development policy will help to drive the positive impacts of migration:

- provision of advice to countries of origin on the issue of migration policy
- support to ensure better use of the funds transferred by migrants (remittances)
- cooperation on joint diaspora activities
- integration of private economic activities of migrants in development cooperation
- promotion of returning skilled labour and economic reintegration of returnees
- integration of migrant organisations in education activities in the field of development policy in Germany and promotion of networking with municipal actors in the field of development policy

These instruments relate to the developmental impact of migration in general and do not make specific reference to circular and temporary migration. The systematic promotion of circular migration is not seen as a primary task of the Ministry for Economic Cooperation and Development, which – as mentioned – is more interested in implementing accompanying measures in the context of development cooperation. At the same time, the Ministry welcomes the EU mobility partnerships as well as the promotion of dialogue and the practical cooperation between the member states of the European Union on the one hand and countries of origin and transit states on the other.

The German government's 13th Report on Development Policy states the following:

"Germany intends to facilitate the circular migration of third-country nationals who have resided here legally and for a longer period of time, as this shuttle process in particular can promote knowledge transfer and the development of the country of origin. A return to the EU could be possible even after longer stays in the country of origin."³³

In a speech to mark the 2nd Stuttgart Forum for Development on October 22, 2010 German Minister for Economic Cooperation and Development Dirk Niebel also took a positive stance on the idea of circular migration. He said:

"Circular migration [...] allows migrants to interrupt their stay in the destination country and return to their country of origin for a certain period of time. In this way, they take the skills and knowledge they have acquired abroad with them and thereby enrich the economy and culture of both countries. I believe this is an interesting approach." (Niebel 2010: 5f., own translation)

The point of view expressed here, namely that circular migration comprises the interruption of a stay in the destination country for the purpose of temporary return to the country of origin, is an interesting approach, not least as it sets itself apart from other perspectives – such as the migration control approach outlined in the following section.

³³ BT-Drs. 16/10038, p. 53 (own translation).

2.1.3 The position of migration management

From the point of view of migration management, the emphasis is generally on migrants coming to the destination country temporarily and then returning to their country of origin after a time-limited stay. German immigration law is geared towards the principle of control and restriction of immigration of foreigners to Germany (cf. Section 1 Para. 1, 1st sentence Residence Act). In their arguments supporting the draft of the Immigration Act that came into effect on January 1, 2005 the governing parties of the time noted that there was a broad consensus in society on the necessity for a modern set of instruments to govern residence that should cover all forms of migration and allow “differentiated, goal-oriented control”.³⁴ The Residence Act, the centrepiece of the new German legislation on immigration, stipulates that immigration should be permitted and organised “with due regard to the capacities for admission and integration and the interests of the Federal Republic of Germany in terms of its economy and labour market” (cf. Section 1 Para. 1, 2nd sentence Residence Act).

The debate on circular and temporary migration in Germany also makes reference to the dimension of goal-oriented migration management. This was clearly the case in the strategy paper issued by former Interior Ministers Schäuble and Sarkozy but is also true of more recent unofficial and official statements. Schäuble and Sarkozy also determined that “uncontrolled immigration” into the labour markets and social security systems was not desirable. The goal of manageability is also reflected in the linking of circular migration concepts to the – if necessary enforced – return of migrants:

“If the concept of circular migration is to be successful, voluntary return (...) following a stay in an EU member state is important. (...) Finally, we must also take care to ensure that the countries of origin unconditionally fulfil their obligation to accept the return of those migrants who do not want to return voluntarily.”³⁵

In January 2007, the then State Secretary Peter Altmaier also said that temporary or circular migration was basically incompatible with the possibility of “consolidation of residence”. He added that the return of migrants ought to be ensured in cooperation with the countries of origin in order to underpin the development aspect.³⁶ In a response to a parliamentary question on March 28, 2007 the German government went a step further, declaring that the proven, reliable return acceptance by third countries of nationals obliged to leave Germany was a key element in the partnerships with these third countries desired by EU and that this also formed the basis for any expansion of legal migration options.³⁷

At the circular migration workshop in Nuremberg on October 5, 2009 by the National EMN Contact Point (see Sections 1.1 and 2.1), several participants expressed their scepticism regarding the aspect of migration management in connection with circular migration. In

34 BT-Drs. 14/7387, p. 57 (own translation).

35 Source: unpublished manuscript entitled “Deutsch-Französische Initiative für eine neue Europäische Migrationspolitik” (own translation; German-French initiative for a new European migration policy), no place or date, see also *Angenendt* 2007: 1.

36 cf. BT-Drs. 16/4134, p. 8 (response of Parliamentary State Secretary Peter Altmaier on January 22, 2007).

37 cf. BT-Drs. 16/4844, p. 3.

particular, it was noted that the possibility of consolidation of residence should exist, that programmes and projects should be based on voluntariness (in other words, that migrants should be able to decide themselves when, where applicable, they wish to return to their country of origin) and that the ability of the state to manage migration flows should not be overestimated.³⁸ A number of research studies also have warned against promoting circular migration through time-limited work programmes. Newland (2009), for example, talks of a “paradox of permanency”, saying that experiences in Australia, Canada and Spain show that migrants who enjoy a permanent right of residence or who are citizens of the guest country are more willing to engage in circular migration (i.e. to shuttle back and forth between country of origin and guest country) than migrants with uncertain residence status. Her conclusion was that only permanent residence rights provide migrants with the security they need to leave the guest country and be confident that they can subsequently return (cf. Newland 2009: 22).

2.2 National legislation, conditions and organisational enforcement

2.2.1 Retrospective: circular migration and the recruitment of foreign workers

The so-called “economic miracle” in the 1950s in the Federal Republic of Germany led to a growing demand for generally unskilled or semi-skilled workers in agriculture, underground mining, the automotive industry and subsequently also in other sectors of the economy. As it was not possible to adequately meet these labour needs from the domestic labour pool, workers were recruited from Southern Europe and the Mediterranean region. This recruitment process began in 1955 in the form of an agreement with Italy, later followed by similar agreements with Spain (1960), Greece (1960), Turkey (1961), Morocco (1963), Portugal (1964), Tunisia (1965) and Yugoslavia (1968). This recruitment process was designed to serve as a strictly temporary form of immigration; the workers were to rotate between their countries of origin and the destination country, namely Germany. This soon proved impracticable for a number of reasons, mainly because many employers did not want to train ever new waves of workers but preferred a stable workforce. As a result, and also as the foreign workers did not leave as originally planned but initially stayed in Germany, what was supposed to be a temporary form of migration became a permanent stay in many cases (cf. Petzl 2009: 6). This led to scepticism among political decision-makers with regard to potential new programmes of a temporary nature. This scepticism can still be seen today.

The “oil price shock” of 1973 that signalled at least a temporary end to economic growth also signalled the end of the recruitment phase. After the German cabinet decided on the so-called “recruitment stop” for foreign workers on November 23, 1973 only a small number of third-country nationals were allowed to immigrate to Germany for the purpose of employment. However, it was not only potential new immigrants who were affected by this recruitment stop: in this connection, Kathleen Newland (2009a) has argued that the patterns of “spontaneous” circular migration between Germany and the countries of origin that had become established among foreign workers who had been working in Germany

38 cf. newsletter EU-Ius-News no. 10/2009, p. 11-13. <http://www.bamf.de>.

for longer periods of time had been made impossible by the suspension of the bilateral agreements – with the result that these migrants had decided in favour of permanent residence in the Federal Republic of Germany for rational reasons. Newland (2009a: 12f.) says that if the option of departure and subsequent re-entry had remained in place, many migrants might have sat out the recession in their home countries, where they could fall back on family networks and where the cost of living would have been far lower.

At the end of the 1980s, there was a shortage of labour in certain sectors of the West German economy (in agriculture, for example, as well as in the hotel and restaurant sector) despite generally high unemployment in the country. This led to a partial rollback of the recruitment stop. Then there were foreign policy considerations in the wake of the upheavals of 1989: the permission for time-limited employment of workers from Central and Eastern European countries was aimed at supporting these states in the transition to a market economy system, stepping up economic cooperation and channelling the migration pressure from Central and Eastern Europe. Since the end of the 1980s, bilateral agreements have been in place governing employment options for contract, guest and seasonal workers as well as for cross-border-commuters. The programmes under these agreements were mostly of a temporary nature, but some of them also promoted circular or multiple migration – in the case of the employment of foreign seasonal workers, for example.³⁹ These bilaterally agreed employment options enabled Germany to take an important step at an early stage with regard to the planned opening-up of the labour markets – after expiry of the transition deadlines⁴⁰ – within the framework of the EU enlargements effective on May 1, 2004 and January 1, 2007.

The Immigration Act that came into force in Germany on January 1, 2005 signalled a shift towards an immigration policy driven more by economic and labour market policy considerations. The new legislation was prompted by the view that Germany had become an immigration country during the course of the preceding decades but that the old legislation did not contain adequate regulations for the management of migration movements (cf. Schneider 2010: 195ff.). Although the Immigration Act retained most elements of the recruitment stop, in particular with regard to people with few or no qualifications, Section 18 Para. 1 of the Residence Act now expressly states that the admission of foreign workers is “geared to the requirements of the German economy, according due consideration to the situation on the labour market and the need to combat unemployment effectively”.

This created a new basis for access to the German labour market by third-country nationals. The most important provisions on residence and access to the labour market are now summarised in the Residence Act. A separate part (Part 8 Residence Act) and two ordinances⁴¹ govern the approval procedure for the taking up of employment in different sec-

39 German employers wishing to take on foreign seasonal workers have the option of recruiting workers they know by name. Every year, many seasonal workers return to the company that employed them in the previous year or years (cf. BMI/BAMF 2010a: 85). There are, however, no exact statistics on the number of seasonal workers who actually engage in circular migration or who return on a regular basis.

40 cf. Parusel/Schneider 2010: 25f, for example, on the transition provisions.

41 Employment Ordinance and Employment Procedures Ordinance.

tors of the labour market. The regulations replaced the dual approval procedure outlined in the 1990 Aliens Act with a single administrative act (“one-stop government”). The dual approval procedure stipulated separate approval for residence and for access to the labour market; under the new system, the work permit is issued by the authorities responsible for foreigners together with the residence permit, provided that this has been internally approved by the labour administration (cf. Parusel/Schneider 2010: 26-28). The employment options for contract, guest and seasonal workers (who exhibit the clearest patterns of temporary and circular migration within the overall context of residence for employment purposes) that existed before the Immigration Act came into force have remained in place.

2.2.2 Legislative framework for residence and nationality issues

Basic principles of German residence legislation

Due to the complexity of German residence laws, this study cannot provide a comprehensive picture of the existing framework for residence and nationality legislation.⁴² Instead, we intend to supply a brief overview of the regulations of German residence law that appear to be of particular relevance with regard to circular and temporary migration. These include provisions relating to specific residence purposes, the stipulated duration of stay in the various cases and the provisions governing loss of the right of residence. While past discussions of circular and temporary migration have focused above all on migration movements for the purpose of economic activity, studying or training in Germany, the possibility of temporary residence or circular migration generally exists in relation to all residence purposes. This is why we also look at individual aspects of residence on family-related, humanitarian or other grounds.

The Residence Act outlines a total of four residence titles in Germany: the visa, the (temporary) residence permit, the (unlimited) settlement permit and the permanent residence permit-EU. As already mentioned at the beginning of Section 2.1, the Residence Act primarily provides for four residence purposes. Circular migration is generally permitted within the context of all residence purposes. The granting of a residence permit to third-country nationals for the purpose of studying, attending a language course or going to school in Germany is clearly based on the assumption of a temporary stay. The period of validity upon first issue and extension of the residence permit for studying is at least one year and should not exceed two years for studying and preparatory measures prior to studying; it may be extended if the goal of residence has not been attained but will be attained within an appropriate period of time (Section 16 Para. 1, 5th sentence Residence Act). In addition, residence permits may also be granted to foreigners for the purpose of applications to study. Following successful graduation, the permit may be extended for up to one year so that graduates can look for a job that is suited to their qualifications (Section 16 Para. 4 Residence Act). This means that a temporary stay is the basic concept for third-country nationals who come to Germany for educational purposes, although an extension of the original time limit and a changeover to different residence purposes (e.g. economic activity) are possible if the necessary preconditions are met.

⁴² Schneider (2009) provides an overview; cf. also the standard legal commentaries on immigration law, e.g. Kluth et al. (2008) or Storr et al. (2008).

Residence permits issued for other residence purposes are initially also always limited in time. In the case of the granting of residence on family-related grounds or for the purpose of economic activity, the temporary aspect is not as pronounced as in the case of stays for educational purposes. Section 18 of the Residence Act, for example, does not stipulate a maximum target duration of residence for the purpose of economic activity. The provisions governing the residence of self-employed people (Section 21 Residence Act) lay out the possibility of a transition from (temporary) residence permit to unrestricted settlement permit after three years, provided that the planned self-employed activity has been successfully realised, while such a transition is only possible after five years in most other cases. The ruling for the admission of researchers in line with Section 20 Residence Act stipulates that the residence permit is valid for at least one year, although lesser durations are also stipulated for shorter research projects. Highly qualified people who are covered by the provisions of Section 19 Residence Act are granted a settlement permit from the commencement of their stay in Germany. The fact that settlement permits are not of limited duration shows that there is no state interest in imposing time limits on – and therefore monitoring – highly qualified people.

When residence is permitted on humanitarian or political grounds or on grounds under international law, there are residence rights of a temporary character (e.g. temporary stay on urgent humanitarian or political grounds or in the event of substantial public interests in line with Section 25 Para. 4 Residence Act) as well as rights for situations in which it is assumed the stay will tend to be a permanent stay (e.g. accepted asylum seekers and recognised refugees, who are generally granted a settlement permit after three years provided that there are no reasons for revocation or withdrawal of recognition).

Section 51 of the Residence Act is also of significance with regard to circularity. It stipulates that residence titles expire if a foreigner leaves German territory for a reason that is not of a temporary nature (Section 51 Para. 1 No. 6) or if a foreigner has left Germany and does not re-enter the country within six months or within a longer period stipulated by the responsible foreigners authority (Section 51 Para. 1 No. 7). In the relevant literature, it has been noted that the conditions and periods for the expiry of the right of residence of a third-country national in an EU member state can create incentives for – or discourage people from – circular migration. It can generally be assumed that a longer period promotes circular migration as foreigners who leave the country need to have no fear that they will not be able to return before the set deadline. The shorter the period, the sooner the residence title is lost. In such an event, the foreigner has to re-apply for permission to enter or stay in the country, resulting in additional costs and creating uncertainty with regard to the possibility of re-entry (cf. Newland et al. 2008: 22; Zenger 2008: 3).

In Germany, this period is relatively short at six months, although there are exceptions for people who are in possession of a settlement permit and who have been legally resident in Germany for at least 15 years (as well as their spouse) providing that they have a secured livelihood and that there are no grounds for removal. The settlement permits of foreigners living in conjugal partnerships with a German national are also non-expiring. Foreigners who return to their home country for the sole purpose of meeting their com-

pulsory military service obligations and return to Germany within three months of their release from military service also retain their residence title.

Section 51 Para. 4 generally stipulates a longer period before expiry of the residence title if a foreigner wants to leave the country for reasons that are of a temporary nature (e.g. studying or other type of education) and is in possession of a settlement permit or if the stay outside Germany serves the interests of the Federal Republic. The latter is the case, for example, if a foreigner works as a development aid worker or spends time abroad to promote development-related business or employment relationships. In these cases, the maximum period for stays abroad without losing the residence title is two years. The length of the re-entry period depends on the residence purpose in question, and extensions are possible (cf. General Administrative Regulation relating to the Residence Act dated October 26, 2009, No. 51.4.1.2). Other exceptions have been agreed within the framework of mobility partnerships with the Republic of Moldova and Georgia for citizens of these states who are legally resident in Germany (see Section 2.3.3 for more details).

The right of return governed by Section 37 Residence Act is also of significance for circular migration. Section 37, Para. 5 of the Residence Act, for example, stipulates that a foreigner who receives a pension from a pension provider based in Germany will as a rule be issued a residence permit if he or she has legally resided in Germany for at least eight years prior to departure.

Basic principles of nationality law

Alongside regulations relating to residence, provisions governing the acquisition of citizenship can also have an influence on the circularity of migration. Although a secured right of residence (in the form of an unlimited settlement permit, for example) can have a similar function, the possession of the citizenship of both the country of origin and the destination country (dual nationality) can sometimes be considered the most effective guarantee of return or re-entry options from a legal and emotional point of view (cf. SOU 2010: 39; Vertovec 2007: 3). Based on the empirical data from the Socioeconomic Panel, Zimmermann and Constant conclude for Germany that the possession of German nationality increases “outward mobility” – in other words, it promotes circular migration patterns: on average, migrants with German citizenship remain resident in Germany less frequently than migrants who hold only foreign nationality (Constant/Zimmermann 2007: 15, 17).

As a rule, German citizenship is acquired through birth or naturalisation. Since the reform of the nationality laws came into force on January 1, 2000 foreigners have an entitlement to naturalisation after eight years of lawful habitual residence in Germany and if certain conditions are met. The possibility of dual nationality is not ruled out in Germany, but the basic principle is one of avoidance of multiple nationality. The requirement to relinquish previous nationality is waived in certain cases; for example if a foreigner cannot relinquish his or her nationality or can only do so under particularly difficult conditions. This is the case if the laws of the country of origin of the foreigner do not provide for the cessation of citizenship or if the country of origin generally refuses to let its citizens give up their na-

tionality.⁴³ Multiple nationality is also to be permitted if the foreigner holds the nationality of another member state of the EU or (since August 28, 2007) of Switzerland. In 2008, more than 52.9 percent of all naturalisations involved continued possession of the existing nationality (cf. BMI/BAMF 2010a: 223-227).

2.2.3 Basic principles of the laws governing employment of foreigners and social insurance

Legislation governing employment of foreigners

The core element of the legislation governing the employment of foreigners in Germany is the internal authority process of approval that was reformed together with the Immigration Act. If a third-country national applies for a residence title that would permit the commencement of an employment relationship, the authority responsible for foreigners reviews whether the employment in question is exempt from approval or subject to the mandatory approval guidelines. If the employment is subject to approval, the Federal Employment Agency is consulted and then reviews the preconditions for approval. Granting of approval is subject to two conditions: it must be proven that it will not negatively impact the labour market, and it must be ensured that there is no available German or legally equivalent employee (e.g. EU citizen or citizen of a member state of the European Economic Area) who can fill the vacancy. It must also be ensured that the foreigner is not employed at less favourable working conditions than comparable German employees.

The various employment purposes as outlined in the Ordinance on the Admission of Foreigners for the Purpose of Taking Up Employment (Employment Ordinance) are reviewed before approval is granted. The employer sends a detailed job description to the Federal Employment Agency, which then checks whether there are any “preferred” applicants in the regional or supra-regional labour market. Only after it has been verified that no such person is available to fill the vacancy may the Agency approve the commencement of employment of the foreign worker (“prioritisation review”). The approval only applies to the residence title issued for a specific residence purpose. The authority responsible for foreigners must transfer the requirements listed in the approval of the Agency (e.g. time limitation of approval, type of employment, employing company, location and scheduling of working hours) to the residence title.

In certain cases and based on various criteria, both foreigners willing to immigrate to Germany and foreigners already resident in the country can be refused approval to take up employment. However, third-country nationals holding a residence title who have already been in jobs in Germany covered by the social insurance regulations for at least two years enjoy preferred access to the labour market. The duration of the approval by the Federal Employment Agency is limited to the duration of employment and to a maximum of three years (cf. Parusel/Schneider 2010: 26-28).

43 These states include Iran, Morocco, Afghanistan, the Lebanon and Syria. As a result, more than 99% of those people from these countries who were naturalised in 2008 retained their previous nationality. Naturalisation also generally involved retention of original citizenship for people from the EU member states, such as Poland, Italy and Greece. An above-average percentage of naturalised persons from Serbia, Montenegro or former Serbia and Montenegro (71.8%), Iraq (85.5%), Israel (95.6%) and Brazil (98.3%) also retained their original nationality (source: BMI/BAMF 2010a: 227).

The Employment Ordinance stipulates which types of employment are exempt from approval and which ones are subject to approval. Types of employment that are exempt from approval include in particular internships, holiday jobs, participation in international sporting events, recruitment of well-qualified people in various areas and as technical personnel as well as international journalists or teachers (Sections 3-15 Employment Ordinance). Highly qualified foreigners who are offered employment corresponding to their qualifications and who meet other criteria may also be admitted to the labour market without approval from the Federal Employment Agency (Section 19 in conjunction with Section 42 Residence Act and Section 3 Employment Ordinance). In these cases, the authority responsible for foreigners alone decides on the immediate issuing of a settlement permit. In all other cases (for which qualified vocational training is sometimes a precondition) the granting of a residence title is subject to Agency approval. These cases include seasonal employment in agriculture and forestry, employment as an au pair, speciality chefs, social work and care workers as well as skilled IT personnel and employee placements within the framework of international personnel exchange (cf. Sections 18-31 Employment Ordinance). In some cases, maximum durations are stipulated for these forms of employment; this means they are temporary stays (also see Section 3.2).

Social insurance issues

Ideas to create incentives for circular migration often also address the “portability” of social insurance benefits – in other words, enabling migrants to take pension entitlements acquired through employment in the destination country with them to their country of origin where these entitlements would serve as an additional form of financial integration support or social security. It is also conceivable that employee and employer contributions to social insurance schemes made in the destination country could be paid out prior to or shortly after departure, creating a further return incentive (cf. Zerger 2008: 4).

In Germany, the portability of social security benefits or the reimbursement of contributions paid is limited. Foreigners only have an unlimited claim to pension entitlements acquired in Germany if their normal place of residence is in Germany. Third-country nationals who relocate their normal place of residence to another country generally qualify for reimbursement of paid pension insurance contributions after a waiting period of 24 calendar months.⁴⁴ This waiting period means that the option of pension contribution reimbursement is more attractive for permanent returnees than for circular migrants, who might migrate to another country or return to Germany within this period. If the general waiting period for entitlement to benefits from the pension insurance system (five years) has already been satisfied but a third-country national leaves Germany before reaching pension age, only 70 percent of the pension sum is paid and pension points earned for contribution-exempt or contribution-reduced periods are not taken into consideration at all (cf. Frings 2008: 107f., margin note 162). The resulting unequal treatment can only be mitigated

⁴⁴ Only the employee's share of the compulsory contributions is refundable. In economic terms, the retention of the employer's contribution share is equivalent to withholding wage components earned by employees.

or avoided through existing bilateral social insurance agreements with individual third countries.⁴⁵

Other social benefits such as job-seeker's allowance, social security, family and child allowance and benefits paid within the context of child or youth welfare and education grants are generally also tied to the residence (depending on legal basis to the "address", the "normal place of residence" or the "actual place of residence") of benefit recipients in Germany. Although shorter, temporary foreign stays are possible under the condition that the address or normal place of residence remains in Germany, permanent relocation of the place of residence to another country is not permitted in this context.

In line with the valid coordination rules under EU law, however, the entitlements that a third-country national has acquired under the social insurance legislation in different member states are added up.⁴⁶ This means, for example, that a third-country national living in Germany who was previously employed in a job covered by the social insurance legislation in another EU state is often entitled to unemployment benefit, even if the required minimum duration of contribution-paid employment of twelve months in line with Book Three of the German Social Code is not met due to limited-contract employment or premature termination of employment. The decisive criterion is the overall duration of employment: in other words, if the third-country national has been employed for at least 24 months during the last three years, the employment periods in another EU state are taken into account (provisions on the reference periods in Sections 123, 124 and 127 Book Three of the German Social Code); unemployment benefit may be received for up to twelve months (cf. Frings 2008: 97, margin note 146). In line with the EU coordination rules, the precondition for entitlement to benefit is that the person in question is also entitled to register unemployed or take up employment based on his or her residence title or on other grounds.

2.2.4 Integration and return aspects

Integration

The relationship between temporary/circular migration and integration in the country of temporary residence has not been clearly identified, and this relationship ultimately depends on questions of definition. In the case of labour migrants who only remain in Germany for relatively short periods of time such as seasonal workers, fairground helpers and showmen's assistants or workers on time-limited contracts, the question of successful integration is not a central issue. The same can be said of foreign students who only spend one semester studying in Germany. In contrast, the integration aspect with regard to the country of origin and the re-integration process in the country of origin is certainly of im-

45 Social insurance agreements exist with the following third countries: Australia, Brazil, Bosnia-Herzegovina, Chile, Israel, Japan, Canada and Quebec, Croatia, Morocco, Macedonia, Montenegro, the Republic of Korea, Serbia, Tunisia, Turkey, USA, Kosovo.

46 Council Regulation (EEC) No. 1408/71 dated June 14, 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community; Council Regulation (EEC) No. 574/72 dated March 21, 1972 on the implementation of Regulation (EEC) No. 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community; Council Regulation (EC) No. 859/2003 dated May 14, 2003 extending the provisions of Regulation (EEC) No. 1408/71 and Regulation (EEC) No. 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality.

portance for circular migration, regardless of whether this form of migration is governed by special programmes or is practiced spontaneously and in a non-managed fashion. The interim report of the Swedish parliamentary committee on circular migration and development notes, for example, that successful integration in the destination country also improves the prospects of successful re-integration in the country of origin. If, on the other hand, a migrant does not become integrated, the years of absence from the country of origin might result in “brain waste” (cf. SOU 2010: 39). Castles (2006) supplies a further argument with regard to integration: in view of the efforts to introduce new programmes for temporary and circular migration, he warns against neglecting measures to integrate labour migrants. He says there is no reason to assume that the countries who recruit workers will be any more successful than they used to be in preventing the permanent settlement of people who were only supposed to stay temporarily (cf. Castles 2006: 760f.).

The issue of the successful integration of immigrants is regularly a focal topic of political and public debate as well as media interest in Germany. It is generally agreed that Germany has for a long time neglected the integration of immigrants – also due to the assumption that the “guest workers” recruited during the 1950s and 1960s would return to their countries of origin after working in Germany; but the number of exits has not been as high as expected (cf. Bommers 2001: 52f.).

The 2005 Immigration Act signalled the beginning of systematic integration policy in Germany and created a legal foundation for integration measures. The “National Integration Plan” adopted in 2007 identified a number of key fields of action for integration activities that extended beyond the legal provisions of the Residence Act – including the improvement of integration courses, promoting the German language, ensuring a high quality of education and training, improving employment prospects, improving the life situation of women and girls, realising equality of opportunity, furthering cultural plurality and strengthening intercultural skills (cf. BAMF/EMN 2010a: 32).

To ensure that the integration of migrants is successful in Germany, all immigrants in possession of a residence title valid for more than one year can participate in a state integration course designed to support their own integration efforts.⁴⁷ The integration course comprises basic and advanced language courses as well as an orientation course. In addition, the Federal Office for Migration and Refugees (BAMF) also offers “migration counselling for adult immigrants”. This counselling focuses on the initiation and support of the integration process and takes the form of professional one-on-one sessions. The aim is to determine the skills of immigrants, to draw up a tailored promotion programme for each immigrant and to provide assistance in putting this programme into practice. The BAMF has set up a nationwide network of counselling centres for this purpose. In addition to performing its statutory integration tasks, the BAMF supports projects geared towards the social and societal integration of immigrants in Germany who intend to stay in the country permanently.

47 The precise conditions for entitlement to participate in an integration course are laid out in Sections 44 and 44a Residence Act. Alongside new immigrants, migrants already living in Germany may also attend a course of this kind or can even be obliged to do so if they receive basic job-seeker’s benefits. They pay only 1 euro per 45-minute lesson; course attendance is free of charge for recipients of basic benefits and ethnic German repatriates (cf. BAMF/EMN 2010a: 33).

The supported nationwide projects are focused on the places where immigrants and German nationals live and encounter one another – in the residential environments and in the institutions and associations in the city quarters. Under the lead management of the BAMF, experts from the fields of politics, administration, integration practice and science drew up a nationwide integration programme that was adopted by the German cabinet on September 8, 2010. This programme provides for, among other things, the early and comprehensive promotion of German language skills, the improvement of the educational prospects of children and youths with migration backgrounds, facilitating the involvement of people with migration backgrounds in their social environments and in actively shaping the life of society as well as the evaluation of integration measures (cf. BMI/BAMF 2010b).

With certain exceptions, the state integration packages and measures are open to all immigrants who are “lawfully” and “permanently” resident in Germany (cf. Sections 43 and 44 Residence Act), regardless of the purpose of their stay or of any prior plans of migrants to return to their country of origin or move to another country after spending a certain period of time in Germany.⁴⁸ This means that the preconditions for integration are basically also present for circular migrants. Should Germany subsequently create programmes with quotas for (managed) circular migration within the framework of European mobility partnerships or national framework agreements with third countries, it would be advisable to clarify the issue of integration elements within the context of these measures.⁴⁹ Such measures could also include ex ante measures in the country of origin in question preparing migrants for their stay in Germany (“pre-integration”, cf. IOM 2009a for details).

Return

Depending on exactly which forms of labour migration to Germany are observed, the legislative either assumes that foreign workers will remain in Germany permanently or that they will return to their country of origin or move on to another country after a certain period of time. There is a requirement or expectation that migrants will return to their country of origin in the case of seasonal workers, contract workers, guest workers or au pairs, for example. In the case of highly qualified personnel or specialists, on the other hand, the legislative is interested in ensuring that these working immigrants do not leave Germany once again after a certain period of time; rather, the aim is to create incentives for them to stay in Germany.

There are currently no special federal rules in Germany relating to the creation or organisation of official return assistance. As a result, people willing or under an obligation to return to their countries of origin have no individual legal entitlement to financial support or support of any other kind for their voluntary return. The only exception is a provision in the 1983 Return Assistance Act which is still in force today and which provides for an unlimited legal entitlement of foreigners to comprehensive return-oriented counselling. These services are generally open to all foreigners who are willing to return to their countries of origin (cf. Schneider/Kreienbrink 2010: 46f.).

48 Persons issued a settlement permit following their entry to Germany (e.g. highly qualified specialists in line with Section 19 Residence Act) are generally not entitled to attend an integration course.

49 For recognition of integration measures attended in other EU member states see Section 44 Para. 2a Residence Act.

The Ministry of Economic Cooperation and Development funds the “Returning Experts” programme of the Centre for International Migration and Development (CIM) in the area of “returns” that are considered meaningful from a development policy point of view. This programme systematically supports the occupational integration of graduates and experienced specialists from developing, emerging and transformation countries who attained their qualifications in Germany and who are interested in returning to their countries of origin. The focus is on the placement of skilled personnel in fields that are of importance in development policy terms. The programme offers “skilled returnees” not only placement and counselling services but also financial support. The programme also provides services to employers – to help them find suitable personnel, for example. The “Returning Experts” programme is also involved in the mobility partnership with the Republic of Moldova and helps returnees to successfully re-enter the local labour market. The programme is active in around 20 countries overall (cf. BAMF/EMN 2010a: 42). A number of further services aimed at supporting returning labour migrants are offered at regional and municipal level as well as by independent organisations (cf. on this Schneider/Kreienbrink 2010: 61f., 70ff.).

In order to promote support for returnees, the BAMF set up the “Central Office for Information on Return Assistance” (ZIRF) in July 2003. With the help of a database, information on return assistance programmes, country information and details of counselling offices is collected and passed on to potential returnees, authorities or counselling offices. This service is basically also open to foreign workers who are interested in returning to their country of origin but is primarily designed for other categories of migrants – for example, people who were admitted for humanitarian reasons or whose residence title has expired.

The REAG/GARP programme (Reintegration and Emigration Programme for Asylum-Seekers in Germany/Government Assisted Repatriation Programme) jointly funded by the German government and the federal states provides support for asylum-seekers, rejected asylum-seekers, recognised refugees, civil war refugees, unlawfully resident third-country nationals, victims of forced prostitution or human trafficking and other foreigners who want to return to their home country or move on to other states. The REAG component pays transport costs and flat-rate travel assistance, while GARP provides start-up support for the re-integration of people from countries that are of particular importance for Germany in terms of migration policy. This programme also caters to the belief that the voluntary return of people who do not or no longer meet the requirements for lawful residence is not only more humane but also more cost-efficient than removal. This programme cannot, however, be viewed as an instrument to promote circular migration, as the precondition is that people who receive support payments through the programme will not return to Germany permanently for a period of five years following their return to their country of origin. In the event that this does occur, the amounts that were paid out can be reclaimed.

2.3 Cooperation with third countries

In its endeavour to manage labour migration into Germany, the German government cooperates with third countries on several levels and through different forums. The employment of seasonal workers, contract workers and guest workers is based on bilateral agreements, for example. The authorities of the partner states are included in the framing

of such agreements. In addition, Germany is also involved in the international dialogue on migration issues – through the Rabat Conference, for example, and the follow-up process,⁵⁰ the “Building Migration Partnerships” initiative,⁵¹ the Global Forum on Migration and Development⁵² and initiatives within the framework of the Organisation for Security and Cooperation in Europe (OSCE). Germany is also part of a “Joint Expert Group” within the context of the EU-Africa MME Partnership (Migration, Mobility and Employment) as well as of a number of European mobility partnerships.⁵³

2.3.1 Temporary employment of contract and guest workers

Contract worker agreements enable companies in the partner states to send their employees to Germany for a limited duration for the purpose of completing a work project in cooperation with a German company (Section 39 Employment Ordinance). These inter-state agreements have been in existence since the 1970s and are mainly used in the construction industry (cf. Sachverständigenrat 2004: 129f.). The number of employees that can be deployed under these agreements is regulated by quota and adjusted to labour market developments on a yearly basis. During the period from October 2008 to September 2009, the quota for all 13 contracting states⁵⁴ totalled 46,740 workers. In recent years, however, the quotas have only been partly utilised. In 2008 there were only on average 16,576 contract workers employed in Germany (cf. BMI/BAMF 2010a: 82), while the average figure for 2006 was 16,209 (also see Table 6 in Section 3.2).⁵⁵

Guest worker agreements in line with Section 40 Employment Ordinance have been signed with 14 Central and Eastern European states. Under these agreements, workers from the contracting states can be employed for up to 18 months for the purpose of their occupational or language-related further training; the calculations of the Federal Employment Agency are based on a standard employment duration of at least twelve months. Here as well, the number of workers is subject to a quota – which most recently totalled 11,050 people. But even this quota has not been fully utilised in recent years; numbers have in fact

50 cf. newsletter “Migration und Bevölkerung” (migration and population), issue no. 6/2006.

51 cf. COM(2010) 214 final, p. 10.

52 cf. <http://www.gfmd-fmmd.org>.

53 cf. First Action Plan (2008-2010) for the Implementation of the Africa-EU Strategic Partnership, p. 37f.

54 Bosnia-Herzegovina, Bulgaria, Croatia, the Czech Republic, Slovakia, Serbia, Latvia, Macedonia, Poland, Romania, Slovenia, Hungary and Turkey. Within agreed fixed limits (employment quotas), workers from these countries may be employed in Germany for a limited period to perform work contracts entered into by their employer and a German company. The Court of Justice of the European Communities (Case C 546/07) recently ruled that companies from another EU member state must also be able to utilise the quotas in Germany.

55 Above and beyond the quotas for contract employees, foreign employees may also be posted for up to three months within a year for the purpose of assembling/dismantling machines or (IT) systems (Section 11 Employment Ordinance). Moreover, foreign workers can be admitted for a total of up to nine months for the purpose of assembling prefabricated and modular houses as well as prefabricated and modular halls. Admission is based on Section 35 Employment Ordinance and Section 4 of the Regulations Governing Exceptions to the Recruitment Ban; the assembly of houses made of prefabricated block planks, houses made of prefabricated wall elements if these elements are (as in conventional on-site construction) positioned using poured concrete and joined to form large-sized wall elements, holiday homes, garden sheds and other auxiliary structures are excepted. Based on Section 35 Employment Ordinance, there is a special agreement with Estonia, where local manufacturers of so-called block plank houses are permitted to perform assembly of the block houses in Germany using their own skilled employees; every year, 100 Estonian block plank house fitters can be admitted for this purpose for up to twelve months in line with an agreement between Germany and Estonia (cf. information sheet “Beschäftigung von Monteuren zur Errichtung von gelieferten Bohlenblockhäusern aus Estland. Voraussetzungen, Zulassungsverfahren” (employment of fitters to erect block plank houses from Estonia. Preconditions, admission procedure), last revised: 09/2009, Chemnitz Employment Agency).

fallen significantly, totalling just 652 placements in 2009 (see Table 6 in Section 3.2). The employment of guest workers is not subject to any proviso related to the labour market situation; i.e. approvals are not subject to the requirement of a prioritisation review by the Federal Employment Agency. The Central Placement Office has to ensure appropriate participation of all economic sectors, even though there are no mandatory provisions governing worker distribution across different sectors.⁵⁶

The agreements on the employment of contract and guest workers between Germany and the various partner countries⁵⁷ play a key role in bilateral economic relations. The German government believes that these agreements have promoted the development of the market economy in many partner states. In addition, the cooperation between German companies and the contract worker companies as well as the workers themselves has brought Europe closer together. The positive stimuli for the exchange of goods and services generated by the work contract activities are also relevant in terms of labour market policy. The approval process for the work contracts is handled jointly by the quota allocation offices of the partner states and German government agencies, in particular the labour administration.⁵⁸

The aim of employing contract workers is not primarily to create employment options for foreign workers but above all to provide the companies with access to entrepreneurial know-how. The key element in the contracts is the promotion of economic cooperation between the partner countries. The foreign companies perform concrete work contracts in Germany using their own employees. The remuneration of the deployed workers must be in line with German wage scales, and health insurance and work safety also need to be guaranteed. The social insurance contributions are to be levied in the home country based on a general legal principle for workers with time-limited deployments.

Contract work agreements are geared towards the time-limited employment of workers: the idea is not to take high-performing and dynamic workers away from the partner states but to promote the qualification of these workers so that they can in turn promote development in their own country. As Heyden (1997) notes, the agreements help to stabilise and improve the balance of payments of the partner countries. The foreign currency transfers and income effects can boost domestic investment levels and therefore facilitate restructuring processes. This effect is even more pronounced with work contracts, as the com-

56 cf. "Gastarbeiter-Durchführungsanweisungen zur zwischenstaatlichen Arbeitsvermittlung aufgrund der Vermittlungsabreden der BA mit den Arbeitsverwaltungen der Herkunftsländer (Gastarbeiter-Vereinbarungen)" (guest workers-implementation guidelines for inter-state work placement based on the placement agreements between the Federal Employment Agency and the labour administrations in the countries of origin), Federal Employment Agency (ref. no. SP III 32 – 5721), last revised: February 2010, Nuremberg, p. 3.

57 Bilateral government-level agreements on contract workers exist both with countries that meanwhile belong to the EU (Bulgaria, Czech Republic, Slovakia, Latvia, Poland, Romania, Slovenia, Hungary) and several third countries (Bosnia-Herzegovina, Croatia, Serbia including Montenegro and Kosovo, Macedonia, Turkey). Guest worker agreements are in place between Germany and the EU states Hungary, Poland, Czech Republic, Slovakia, Slovenia, Bulgaria, Estonia, Latvia, Lithuania and Romania as well as the third countries Albania, Russian Federation and Croatia. An agreement also exists with Switzerland, but this agreement is no longer of relevance since the freedom of movement agreement was signed by the EU and Switzerland. Guest worker agreements contain exchange programmes, but very few German workers take advantage of these programmes.

58 cf. BT-Drs. (printed paper) 15/5934, July 20, 2005, p. 36.

panies themselves generate foreign currency through their activities in Germany which is subsequently available for investment in the home country.

As already mentioned, contract work activities have become less and less important in quantitative terms in recent years, however, also due to the enlargement of the EU and the freedom of movement for citizens of the “new” member states. The employment figures have fallen steadily and markedly over the years. Since May 1, 2004 contract worker agreements for the new EU members have only been of significance in the construction sector.

2.3.2 Placement and employment of seasonal workers and fairground helpers

Every year, the employment of seasonal workers is of major importance for many agricultural companies from the beginning of the cropping period onwards. These companies need to be able to meet their seasonal labour needs flexibly in dependence on factors like weather conditions and market situation. The existing provisions on the admission of foreign seasonal workers in Germany are designed to ensure that the agricultural sector can meet its need for workers but are, in view of widespread national unemployment, also and above all geared towards promoting the placement in short-term seasonal employment of unemployed people in Germany who are receiving benefits. These two goals are seen as being of equal importance (cf. BMAS/BMELV 2010: 3). Although in many cases the migration of foreign seasonal workers does not constitute circular migration in line with the working definitions of this study – as it does not involve any change in address and as the work stay generally only lasts a few months – we will nevertheless be taking a closer look at the regulations for the employment of foreign seasonal workers at this point, as the EU Commission sees the employment of seasonal workers from third countries as representing an important starting point for the development of concrete proposals to facilitate circular migration (see Section 2.5).

The precondition for admission of foreign seasonal workers and fairground helpers and showmen’s assistants is the existence of bilateral placement agreements between the Federal Employment Agency and the labour administration of the country of origin in question.⁵⁹ The duration of employment of the individual workers is limited to a maximum of six months per calendar year (depending on the sector, however, companies can generally employ foreign seasonal workers for a maximum of eight months per calendar year, cf. Section 18 of the Employment Ordinance). Placement of seasonal workers is handled by the Federal Agency’s Central Placement Office for Work Abroad and Specialist Workers. German employers are given the option of recruiting people they know by name. This promotes multiple migration. Every year, many seasonal workers return to the company that employed them in the previous year or years.

The basic rule is that work permits may only be issued to foreign seasonal workers if their employment does not negatively impact the labour market, if they enjoy the same working conditions as domestic employees and if German nationals or legally equivalent foreigners are not available to fill the vacancy in question (“prioritisation review”). As ex-

⁵⁹ Agreements are currently in place with the EU states Poland, Slovenia, Hungary, Slovakia, the Czech Republic, Romania and Bulgaria as well as the third country Croatia (cf. BMAS/BMELV 2010: 6).

perience shows that it is not possible to mobilise anything like enough workers from the domestic labour market and as individual priority checks would involve a disproportionate amount of effort, the Federal Ministry of Labour and Social Affairs has stipulated in recent years that Central and Eastern European workers will be approved for employment in a company at a level of 80 percent of the approvals issued in 2005 (i.e. 263,836)⁶⁰ without case-by-case review of the options for placement of domestic job-seekers. Beyond this level, foreign labour is only approved if German workers are not available to fill the jobs in question. These additional approvals must not take the total number of Central and Eastern European seasonal workers in any company to more than 90 percent of the figure approved in 2005. But even this provision is flexibly handled to the extent that a hardship provision has been introduced. The German government has ruled that the employment agencies may approve additional foreign seasonal workers if it is not possible to recruit a sufficient number of domestic workers to meet the 10 percent “domestic worker quota” despite serious efforts to do so.⁶¹

While one of the core aims of German provisions on the admission of foreign seasonal workers is to cater to the needs of German employers, who often have problems to find a sufficient number of domestic workers in seasonal sectors of the economy, seasonal employment also creates an employment corridor to relieve migration pressure. In addition, the German practice of admitting seasonal workers also helps to improve the social situation of the people in the partner countries. The advantage of the limited duration of employment is that as many people as possible can enjoy this “social benefit”, preventing a permanent brain drain from the partner states (cf. Heyden 1997).

Whereas the number of foreign contract and guest workers has fallen in recent years, the number of foreign seasonal workers has remained more or less stable (see the data in Section 3.2).

2.3.3 Mobility partnerships and bilateral agreements

There are indications that cooperation with third countries within the framework of contract or guest worker agreements could gradually be supplemented by new cooperation instruments or replaced by new forms of cooperation. The efforts being made to create so-called “mobility partnerships” within an EU context are of particular relevance in this regard. Currently, these kinds of voluntary partnerships exist – as mentioned above – with the Republic of Moldova, Cape Verde and Georgia. The measures planned within the framework of the partnerships are not only geared towards migration and development aspects but partly also aimed at increasing flexibility within the context of personal movement.

Besides this, the practice of circular migration and other development-related forms of migration is sometimes also promoted within the framework of community funding

60 329,795 seasonal workers were admitted in 2005.

61 cf. on this for more details: Federal Employment Agency, “Merkblatt für Arbeitgeber zur Vermittlung und Beschäftigung ausländischer Saisonarbeitnehmer und Schaustellergehilfen” (information sheet for employers on the placement and employment of foreign seasonal workers and fairground helpers and showmens’ assistants) (last revised: January 2010), p. 8f.

programmes. In particular through the creation of the “Thematic Programme for Cooperation with Third Countries in the Areas of Migration and Asylum” at the end of 2006, the European Union developed a funding instrument focusing on project measures that can also include promotion of circular migration. The programme on migration and asylum is one of five thematic programmes contained in the EU regulation on funding of development cooperation. In the 2007-2013 planning period, the thematic programme is also continuing measures in the AENEAS programme⁶² in the field of migration (cf. Schneider/Kreienbrink 2010: 54ff.).

Within the framework of the mobility partnership with the Republic of Moldova, a number of programmes and projects have already been launched in the fields of migration and development, promotion of legal migration and combating illegal migration.⁶³ When this study was completed, circular migration had only just begun to be considered as part of this cooperation; the partner states have agreed to review the possibility of programmes directed towards this goal.⁶⁴ One of the goals of this cooperation is to facilitate the “outward mobility” of citizens of the Republic of Moldova (as well as Georgian nationals) who are legally resident in Germany with the aim of “capacity building” – in other words, strengthening the diaspora and underpinning development in the countries of origin by enabling longer temporary periods of absence (up to a maximum of 24 months) without loss of the residence title. Further areas of cooperation with the Republic of Moldova concern cooperation in the fields of border management and border control as well as capacity building in the area of migration, integration, asylum and modern administration. Germany is also involved in similar project initiatives as part of the mobility partnership with Georgia.

Germany is currently also working on the drafting of a framework agreement with the Republic of Ghana on questions relating to migration management. The planned agreement is to be geared towards the concept outlined in the Stockholm Programme and in the European Pact on Immigration and Asylum, thereby covering the three main elements of the overall EU approach: effective organisation of legal migration, effective prevention and combating of illegal immigration, and the forging of a closer link between

62 AENEAS is the follow-up instrument of a preparatory measure for cooperation with the third countries in the area of migration. The funding programme approved in 2004 was originally given a budget of 250 million euros for the period from 2004 to 2008. In view of the conclusion at the end of 2006 of the EU financial framework, the duration of the AENEAS programme was shortened to three years. The aims of the thematic programme include “fostering the links between migration and development, especially by encouraging the contribution of diasporas to the development of their country of origin and increasing the value of migrants’ return; mitigating brain drain and promoting the circular movement of skilled migrants; facilitating financial transfers of migrants to their country of origin; supporting voluntary return and reintegration of migrants and building capacities for migration management.” (Section 16 Para. 2 (a), Regulation (EC) No. 1905/2006 of the European Parliament and of the Council dated December 18, 2006 establishing a financing instrument for development cooperation).

63 Similar approaches to migration management are also contained in measures in the field of “European Neighbourhood Policy”. This policy relates to third countries that are direct neighbours of the EU and is designed to prevent the creation of new dividing lines between the enlarged EU and its neighbours – and instead to strengthen the prosperity, stability and security of all. To this end, bilateral action plans are being drawn up to be agreed by the EU and each partner. They comprise an agenda of political and economic reforms with short and medium-term priorities. The issue of “migration and development” is also covered in some of the bilateral action plans (cf. http://ec.europa.eu/world/enp/policy_en.htm).

64 Mobility Partnership Moldova – European Union, Information Newsletter Edition No 2 – May 2010, p. 6. http://www.mfa.gov.md/img/docs/bi_mp_nr2_en.pdf

migration and development.⁶⁵ In this connection, the draft of the framework agreement provides for basically time-limited economic and labour migration, structured in a way to ensure that the scope of temporary immigration to the German labour market is related to the scope of return of Ghanaian nationals who are obliged to leave Germany. First-time granting of a residence title is to be limited to a maximum stay of two years. Once the framework agreement has been signed, expert sessions will finalise the details with regard to the economic sectors and occupational groups for which economic and labour migration is to be approved and will decide on the corresponding quotas. The German government views the proposals on structured and time-limited migration contained in the draft version of the framework agreement as an expression of a desire to create circular migration options of the kind that have also been supported in several Council conclusions on EU level.⁶⁶

2.4 Approaches and perspectives for models of temporary and circular migration

To the extent that political decisions should be made to promote circular migration based on economic policy and labour market policy and/or development policy considerations, there are various ways in which this can be achieved. First, there is the option of creating targeted programmes for the circular migration of people from specific countries of origin within the framework of bilateral or multilateral agreements. These agreements could also be geared (irrespective of the country of origin) towards specific occupational groups of which there is expected to be a shortage on the German labour market in the medium and long term. Another conceivable option – which is independent of any dedicated programmes – is the creation or reinforcement of general incentives to facilitate circular migration behaviour for all migrants.

Possible incentives can be derived from the preceding sections of this study, in particular Sections 2.2 and 2.3, where the following points were addressed:

- legal basis for immigration for the purpose of economic activity
- continued validity or loss of residence title upon exit from Germany as well as the conditions for re-entry following a longer period of absence
- importance of nationality law
- importance of successful integration and re-integration
- portability of social insurance benefits and pension entitlements
- taxation and insurance issues

Corresponding ideas can also be found in the literature: in the interim report of the Swedish parliamentary committee on circular migration (SOU 2010), for example, as well as in Newland (2009) and Zimmermann (2009). With regard to nationalities and integration issues, Newland notes that dual citizenship and other forms of secure and non-limited residence rights (such as the “settlement permit” or the “permanent residence permit-EU”

65 cf. “Das geplante Migrationsabkommen der Bundesrepublik Deutschland mit Ghana” (the planned migration agreement of the Federal Republic of Germany with Ghana), response of the German government to the parliamentary question of the group “Die Linke”, BT-Drs. (printed paper) 17/848 dated February 26, 2010, p. 2.

66 cf. BT-Drs. (printed paper) 17/848, p. 3.

in Germany) give migrants the feeling that they can return to the guest country even after lengthy periods of absence. Measures like this would therefore create incentives for actual circular migration. Constant and Zimmermann (2007: 17) arrive at a similar conclusion based on the empirical data of a random sample from the Socioeconomic Panel: the easier and more practicable mobility is for potential migrants (through naturalisation, for example), the greater the probability that we will actually also see shuttle or circular migration patterns. Newland emphasises that the most important incentive (and one that has already been addressed in this study) is related to the retention of residence titles even following longer periods of absence. Newland further points out that lower travel costs, money transfers between guest country and country of origin, international investments and the maintenance of cross-border personal contacts (Newland talks of “philanthropy” in this connection) can also create strong incentives for circular migration. She believes that these incentives could additionally be underpinned by cross-border institutional partnerships, for example between schools, hospitals, public institutions and industrial companies (cf. Newland 2009: 23).

Zimmermann (2009), who proposes a “circular migration agenda” comprising an entire catalogue of possible incentive instruments to promote circular migration, supports the creation of a system made up of both targeted programmes and agreements for managed circular migration as well as a more general framework of conditions that facilitate spontaneous and natural circular migration. In his opinion, we should create both entry and exit incentives. According to Zimmermann, the basic principle of a system for circular migration should be a legal entitlement or at least a chance to return to the guest country (following previous return to the country of origin). This right should be tied to the existence of an employment offer. Like Newland, Zimmermann stresses the importance of the right of citizenship or a secure residence title as an instrument to promote circular migration. He also assigns an important role to the admission of foreign students:

“Enrolment of international students is a powerful way to establish the credibility of a country on the international skilled labour market, since they serve as an effective recruitment base of migrants. Migrants learn the language of the host country and affiliate with its culture. They should be allowed to remain in the country after the completion of their study provided that they find a job.” (Zimmermann 2009: 28)

In addition, Zimmermann underlines the importance of ethnic networks and the contacts of migrants in their regions of origin:

“Ethnic networks effectively connect people to jobs; they do better than labour offices and headhunters. Hence, circular migration can be established through the well functioning of ethnic networks. A more accurate analysis of mechanisms to both attract and retain talent is needed and governments, universities and other stakeholders in the sending and receiving countries must be encouraged to think more strategically about how to connect better through ethnic networks.” (Zimmermann 2009: 28)

Zimmermann says that ethnic communities (diasporas) are also key with regard to the transfer of knowledge and skills, technology, capital and remittances between countries of origin and destination countries – and that they can also build bridges between markets and companies on account of their cultural knowledge (on this, also see Baraulina/

Borchers 2008 as well as BMI/BAMF 2010a: 243-247). Finally, Zimmermann also suggests the definition of certain standards on international level with regard to such issues as minimum requirements for work contracts for circular migrants, standards for the transfer and retention of pension entitlements under the conditions of cross-border mobility, the circulation of remittances and the conditions for accompaniment by family members (cf. Zimmermann 2009: 28f.). In this connection, it is also important to mention normative standards for approaches to circular migration that are primarily based on socioethical considerations, that are fair from a development policy point of view and that are oriented towards human rights (cf. Fisch 2010).

The interim report of the Swedish parliamentary committee on circular migration looks not only at the aforementioned aspects of integration, residence status and nationality but also at questions relating to the portability of pension entitlements and social security benefits as well as taxation and insurance issues. Among other things, the report notes that it is important to migrants that pension entitlements accruing from several short stays in different countries can be merged and that the payment of the pension when migrants reach the corresponding age is not dependent on residence in a specific country (on this, also see Venturini 2009: 402).⁶⁷ According to the report, survivor's pensions should also be portable, and it is also important that membership of a health insurance scheme in the destination country also remains valid, at least for a certain period, during a stay in another country (in the country of origin, for example). Similar arrangements should be considered for unemployment insurance. The report also notes, however, that there are certain social security benefits that cannot be rendered portable, such as housing benefits or benefits designed to help people look after family members in need of care. With regard to taxation, the reports goes on to say that migrants who stay in the destination country only temporarily for work purposes should be subject to reduced taxation levels, arguing that, in contrast to the situation with permanently resident people, this can be considered fair, as circular migrants take less from the system in the form of welfare state benefits than they pay into it.⁶⁸ The report says the Swedish tax system already provides for lower tax rates for foreign "experts".⁶⁹ However, the authors of the report state that the most important issue in the context of taxation is that the income of circular migrants is taxed only once and not more than once in different countries, adding that this could be ensured by double taxation treaties (cf. SOU 2010: 134-140).

67 What would need to be clarified, however, is which country is responsible for payment in the event of portability and whether it is possible to rely on all governments to actually make the pension payments. A further question is that of the currency in which the payments are made.

68 This kind of provision could be problematic from the point of view of constitutional law and taxation policy, as taxes represent levies without a specific *quid pro quo*.

69 People like foreign researchers and highly qualified specialists profit from this for a period of a maximum five years.

2.5 Approaches to and effects of a European policy for temporary and circular migration

The recent political initiatives of the European Union relating to the management of legal migration from third countries to the EU increasingly refer to temporary and circular migration. To date, this has been particularly evident in the attempts to harmonise the employment of foreign seasonal workers in the member states.

For some years now, greater attention has been paid on EU level to the issue of the employment of seasonal workers, as the structural needs in the field of seasonal activities has become increasingly apparent in several of the national economies in the EU. At the same time, it has become clear that fewer and fewer workers from the EU will be available to fill the necessary jobs in future. In its 2005 communication entitled “Policy Plan on Legal Migration”, therefore, the Commission outlined legislative proposals for the immigration of workers in five areas – one of them being the entry and residence of seasonal workers.⁷⁰ In its 2007 communication entitled “Circular migration and mobility partnerships”, the Commission then made a direct connection between seasonal employment and circular migration when it described the “introduction of a multi-annual residence/work permit for seasonal migrants, allowing them to come back several years in a row to perform seasonal work” as “the main measure to foster circularity”.⁷¹

At the end of 2008, the European Council adopted the Stockholm multi-annual programme, requesting the Commission and the Council to pursue the policy plan on legal migration. In the summer of 2010, the Commission issued the awaited directive proposal. This proposal provides for, among other things, a simplified procedure for the admission of seasonal workers from third countries based on joint definitions and criteria, the stipulation of a standard maximum stay of six months per calendar year for seasonal workers throughout the EU,⁷² the possibility of a multiple entry permit or a simplified re-entry procedure, regulations on the working conditions of seasonal workers and the equality of seasonal workers with domestic workers with regard to certain rights. For stays of more than three months, seasonal workers who meet the admission criteria and on whom a positive decision has been made by the competent authorities in the member states should receive a seasonal work permit. To facilitate multiple or shuttle migration, seasonal workers who meet all the criteria and requirements should be able to apply for a “multi-seasonal work permit” in a single application comprising up to three individual work permits for three consecutive seasons. Alternatively, third-country nationals who have already been admitted as seasonal workers and who apply for admission in a following year should have access to a simplified entry procedure.⁷³

⁷⁰ COM(2005) 669.

⁷¹ COM(2007) 248 final, p. 10.

⁷² Under the current laws, seasonal workers may be employed in Germany for up to six months per calendar year (cf. Section 2.3.2)

⁷³ COM(2010) 379 final, p. 21ff.

At the same time, the Commission also presented the proposal for a directive on the conditions for entry and residence of third-country nationals within the context of an intra-corporate transfer.⁷⁴ It said the core aim of the directive is to enable multinational companies operating in Europe to access the skills and expertise of their qualified personnel and specialists rapidly and with a minimum of red tape. For these management personnel, specialists and trainees, it is proposed that standardised provisions be introduced for an accelerated admission procedure with combined residence and work permit. A further aim is to create more attractive residence conditions and improved freedom of movement within the EU. As the proposal focuses on the limited area of intra-corporate migration and will probably not create any new immigration situations,⁷⁵ we will not be looking into it in any detail here.

The directive proposal for the admission of seasonal workers is currently being discussed in the European Parliament, in the Council bodies of the European Union and in the national states. Depending on these deliberations, on the outcome of the co-decision procedure and the implementation deadline for the EU member states, the system regulating seasonal employment in Germany will probably be adapted in the near future. In a resolution dated September 24, 2010 Germany's Federal Council (Bundesrat) showed a generally positive attitude towards the introduction of a standardised procedure and the application of uniform criteria for the residence of seasonal workers from third countries. At the same time, the Federal Council took a sceptical view of the "multi-seasonal work permit" that was provided for in the proposal of the EU Commission as well as of the simplified re-entry process for people who had already been admitted before: the Council said that multi-seasonal residence titles should not be valid for more than two years and that the introduction of a simplified re-entry procedure is to be viewed critically as there is a risk that this procedure could be abused.⁷⁶ The German government has also conducted an in-depth review of the directive proposal. While it basically recognised the need for a set of European regulations, it said there should be a further review, adding that there was criticism and a need for discussion on several aspects including the proposed regulations on admission procedures (regarding the planned procedural period of 30 days, for example), the introduction of a new residence title and the scope of equality rights. The German government currently sees no need to extend seasonal employment to include placement agreements with further third countries alongside Croatia; it basically supports continued, independent, sector-based management of labour market access for seasonal workers by the individual member states.⁷⁷

74 COM(2010) 378 final.

75 The commitments of the EU states within the framework of the General Agreement on Trade and Services (GATS) already allow companies to draw on intra-corporate transferees in the services sector and in the context of provision of services, typically without an economic needs test (cf. COM(2010) 378 final, p. 3).

76 cf. BR-Drs. (printed paper) 442/10 (decision), September 24, 2010, p. 3.

77 cf. Response of State Secretary Klaus-Dieter Fritzsche on September 6, 2010 to the written question of Bundestag member Alexander Ulrich, BT-Drs. 17/2892, p. 10 as well as BT-Drs. 17/3561 dated October 28, 2010, p. 5, 9.

The central new element for German residence law will be the extension of seasonal employment to all third-country nationals as well as the introduction of a corresponding residence title; the current seasonal employment provision is limited on the basis of bilateral placement agreements to the “new Eastern” EU member states for whom there will be no full freedom of movement for workers until 2011 as well as the third country Croatia (cf. ion 2.3.2).⁷⁸

3 Availability of Data in the Area of Circular and Temporary Migration

3.1 Data from the Central Register of Foreign Nationals (AZR)

For the purposes of this study, we conducted an evaluation of historic data from the AZR (see also Section 1.1). The evaluated data do not concern the participation of foreign nationals in special programmes for circular or temporary migration but primarily provide a number of interesting insights of a kind that have not been available in Germany to date into the potential scope of “spontaneous” or naturally occurring, unmanaged circular migration among third-country nationals living in Germany.

In the evaluation of the AZR, the circular migration patterns of German nationals are naturally not taken into account – even if the people in question have been naturalised or were born as Germans and have a migration background. This also applies to people who have not registered or deregistered in an orderly fashion. Moreover, against the backdrop of the objective of the EMN study to obtain insights into the characteristics and patterns of circular and repeat migration of third-country nationals in the EU member states, all the data discussed below is limited to the universe of third-country nationals who were resident in Germany lawfully and not only for short periods on the cut-off date of June 30, 2010. In other words, the data comprises “stock data” on foreigners who are not citizens of EU member states.

⁷⁸ In view of the fact that the date scheduled for the introduction of unrestricted freedom of movement for citizens of the EU-8 states – namely May 1, 2011 – is unfavourable from the point of view of agricultural and horticultural operators, the Ministry of Labour and Social Affairs has waived the work permit requirement for seasonal employment (and therefore the obligation to pay placement fees) from January 1, 2011 in order to ensure equal treatment of companies. As a growing number of seasonal workers come from Romania and Bulgaria, a simplified admission procedure for seasonal employees was also introduced for these two EU states from January 1, 2011. This was also extended to Croatia: For up to 150,000 Croatian seasonal workers the work permit is granted without individual case-by-case-examination of domestic placement alternatives (cf. BMI/BAMF 2010c: 91f.) The German government believes that a failure to amend the laws in this way would have posed a risk to the timely gathering of the harvest (cf. BT-Drs. 17/2645 dated July 26, 2010, p. 3 and BT-Drs. 17/3561 dated October 28, 2010, p. 5).

Based on various parameters, the aim of the evaluation was to determine for how many of these people data had been stored recording one or more departures to other countries and, where applicable, interim re-entries to Germany (see also Section 1.2). The relevant reporting statuses in the AZR are “first entry into Germany”, “re-entry from abroad” and “departure to a foreign country”. What cannot be determined, however, is the destination country of interim departure or departures. Neither does the AZR document the last country of residence or the state via which re-entry into Germany was made. In the majority of cases, this will have been the home country or country of origin of the foreigner in question. In view of the freedom of movement for third-country nationals within the European Union, however, it is also possible that a foreigner has spent time in another EU state in the meantime. Finally, a stay in a third country that is not the country of origin or the country of citizenship of the foreigner is also conceivable.

The listed figures and percentages can only be minimum numbers, as the data is subject to certain limitations. Due to contradictory storage characteristics, clear-cut assignment of some of the data sets stored in the AZR was not possible. This could be partly due to input errors of the competent authorities but is probably also a result of the fact that there was no historisation option for the AZR data until 2005. This option also permits retroactive documentation of entries and exits by the authority responsible for foreigners, and this has possibly resulted in inaccurate or incomplete data. The data sets that could not be clearly assigned were therefore excluded.

Like the percentage shares, therefore, the listed absolute figures are limited to the cases that can be identified without any doubt; this means they constitute absolute lower thresholds for the extent of circular migration among third-country nationals resident in Germany. It is extremely probable that the data sets of the register that were not included in the evaluation include a significant number of additional people who also completed relevant circular migration movements between Germany and other countries.

It should be noted, further, that these figures and percentages may be far too low, as the data from the AZR do not allow us to determine whether all third-country nationals who temporarily leave Germany comply with their deregistration and renewed registration obligations.

Circular migration patterns among third-country nationals in Germany

The evaluation showed that a total of 4,298,510 third-country nationals were resident in Germany as of June 30, 2010. This is equivalent to around 64 percent of all foreigners stored in the AZR. A previous departure was recorded for 362,725 of these people. This means that, during their lifetime, 8.4 percent of third-country nationals came to Germany once or were born here, then left Germany and subsequently came back to Germany. In other words, these people made three (in the case of those born in Germany: two) cross-border moves. In an extended definition, we could in this connection also speak of circular migrants, even if the criterion of duration of absence is not addressed by these figures. In the following, this group is described as “circular migrants, category I”.

The identifiable share of third-country nationals in the overall “stock” who left Germany and subsequently returned more than once – for whom, in other words, at least five (in the case of those born in Germany: four) cross-border moves are documented – is 2.3 percent. In the following, this group is described as “circular migrants, category II”. This means that repeat circular migration (exit – entry – exit – entry) is far more seldom than one-time circular migration (exit – entry).

Overall, therefore, we can say that at least 10.7 percent of the third-country nationals resident in Germany are circular migrants in line with the working definition chosen for this study (see also Table 1).

In addition, the data was also evaluated to determine how many people left Germany and returned at least once during the last 60 months and in the last 36 months before the cut-off date of June 30, 2010: within the last 60 months, circular migration movements between Germany and other countries have been recorded for 2.6 percent of all resident third-country nationals (111,660 people). This means that almost one in four circular migrants have engaged in circular migration within the relatively short space of the last five years. In the case of 1.5 percent of all third-country nationals (65,007 persons), corresponding exits and renewed entries have occurred within the last three years (36 months). This is equivalent to one seventh of the multiple migrants in category I.

If the evaluation is focused on those migrants who have left and returned to Germany at least twice during the last five years (the aforementioned circular migrants, category II), this adds up to a share of 0.2 percent (7,681 people) of all third-country nationals in Germany.

Circular migration by nationality

In the case of differentiation by nationality or continent, it is conspicuous that the number of resident third-country nationals who exhibit a circular migration pattern sometimes varies considerably. Among the biggest nationality group in absolute terms, namely the Turkish nationals, the percentage of resident persons stored in the AZR with at least one departure was significantly lower (7.2 percent) than for the average of all nationalities together (10.7 percent).

38.2 percent of all resident third-country nationals on the cut-off date (June 30, 2010) are of Turkish nationality; this means that more than one in three non-EU foreigners in Germany is a Turkish citizen. In contrast, the share of Turks in the circular migrants from third countries for whom at least one departure is documented is only just over one quarter (25.7 percent).

With regard to the ten biggest nationality groups, the shares of circular migrants in the overall “stock” are also lower-than-proportional in the case of citizens of the Russian Federation (8.7 percent) and the Ukraine (8.6 percent). For the other main nationalities, on

the other hand, the share of circular migrants is in some cases significantly above the average: “circularity rates” of well above ten percent can be identified among citizens of the former Yugoslavia (18.2 percent), Bosnia and Herzegovina (17.6 percent), Serbia (14.6 percent), former Serbia and Montenegro (15.3 percent), the Republic of Kosovo (14.9 percent) and the USA (14.7 percent) (see Table 1).

Table 1: Circular migration by nationality (top 10, one or more exits)

Nationality	People with at least one exit	Resident persons (total)	Share of total
Turkey	118,611	1,641,705	7.2%
Bosnia and Herzegovina	26,958	153,498	17.6%
Croatia	26,777	220,587	12.1%
Russian Federation	16,404	188,706	8.7%
Serbia and Montenegro (former)	16,180	106,091	15.3%
Serbia	16,092	110,062	14.6%
Kosovo	14,555	97,877	14.9%
USA	14,196	96,248	14.7%
Yugoslavia (former)	12,279	67,408	18.2%
Ukraine	10,716	124,575	8.6%
All nationalities	461,033	4,298,510	10.7%
Continents:			
Europe (without EU member states)	289,607	2,937,693	9.9%
Africa	40,670	268,331	15.2%
America	35,317	212,141	16.6%
Asia	87,217	813,311	10.7%
Australia	1,904	11,536	16.5%

Source: AZR, cut-off date: June 30, 2010

There are similar differences in the “circularity rates” by nationality if we look only at the statistics for those foreigners resident in Germany who have already moved from Germany to another country two or more times (circular migrants, category II). Here as well, the figures for Turkish nationals are also well below-average: at just over 23,000 out of a total of more than 1.6 million resident persons, the AZR shows that only 1.4 percent of Turkish citizens belong to this category (compared to the average of 2.3 percent). Of the ten most important nationalities in terms of absolute numbers, nationals of the Russian Federation (1.5 percent) and Macedonia (2.1 percent) also have below-average shares. This pattern of circular migration with at least two-time departure from Germany is observed with above-average frequency among nationals of former Yugoslavia (4.9 percent), Bosnia and Herzegovina (4.2 percent), Serbia (3.7 percent), former Serbia and Montenegro (3.6 percent), the Republic of Kosovo (3.5 percent), Croatia (3.2 percent) and the USA (2.8 percent).

Table 2: Circular migration based on the main nationalities (top 10)* and for specific periods

Nationality	Resident persons (total)	At least 1 exit in 36 months		At least 1 exit in 60 months		At least 2 exits in 60 months	
		absolute	in %	absolute	in %	absolute	in %
Turkey	1,641,705	13,587	0.8%	23,875	1.5%	1,038	0.1%
Croatia	220,587	3,438	1.6%	5,205	2.4%	1,041	0.5%
Russian Federation	188,706	3,298	1.7%	5,656	3.0%	289	0.2%
China	78,507	2,861	3.6%	4,615	5.9%	175	0.2%
Bosnia and Herzegovina	153,498	2,572	1.7%	3,759	2.4%	924	0.6%
USA	96,248	2,380	2.5%	3,983	4.1%	149	0.2%
India	46,417	2,124	4.6%	3,241	7.0%	301	0.6%
Ukraine	124,575	1,798	1.4%	3,185	2.6%	182	0.1%
Serbia	110,062	1,720	1.6%	2,798	2.5%	236	0.2%
Iraq	80,769	1,653	2.0%	2,876	3.6%	221	0.3%
Stateless	13,301	322	2.4%	482	3.6%	56	0.4%
Unclear	39,668	672	1.7%	1,120	2.8%	110	0.3%
No answer	2,528	66	2.6%	97	3.8%	14	0.6%
Total unknown	55,497	1,060	1.9%	1,699	3.1%	180	0.3%
Total (all nationalities)	4,298,510	65,007	1.5%	111,660	2.6%	7,681	0.2%

* The ten most important nationalities refer to the criterion in column 3 (at least 1 exit in 36 months)

Source: AZR, cut-off date: June 30, 2010

If we look not only at the nationality of circular migrants but also at the time dimension, it is conspicuous that Chinese, US and Indian nationals have engaged in circular migration with above-average frequency during a three or five-year period (cf. Table 2). Based on the data from the AZR, seven percent of Indian nationals and six percent of Chinese citizens resident in Germany have moved away from Germany at least once during the last five years. The corresponding figure for US citizens is over four percent. Even if we focus our observations on the last three years, the figures for these nationalities are still significantly higher than proportional. While only around 7,681 (0.2 percent) circular migrants from third countries have made at least four cross-border moves during the last 60 months, Turkish (1,038) and Croatian nationals (1,041) each alone account for around one seventh of this total. Relative to the overall number of resident foreigners with the respective nationality, the shares of Croatian (0.5 percent), Indian (0.6 percent), Bosnian (0.6 percent) and Lebanese (0.6 percent) nationals are above average.

Circular migration by purpose of residence

Working migrants exhibit the highest level of circularity. As Table 3 shows, 21.7 percent of third-country nationals living in Germany with a residence permit for the purpose of employment as of June 30, 2010 had previously been resident in Germany at least once and had returned following one departure from the country. Third-country nationals in possession of a settlement permit (15.6 percent), who are resident in Germany for educational purposes (11.9 percent) or third-country nationals with a residence permit on humanitarian or political grounds or grounds relating to international law (11.6 percent) moved between Germany and other countries to a lesser degree prior to their current stay. Circular migration is observed even less frequently among third-country nationals who came to Germany for the purpose of family reunification (10.8 percent).

The AZR data show circular migration patterns for only a small percentage (3.2 percent) of asylum-seekers who are in Germany on the basis of a temporary residence permit for asylum seekers. In the case, however, of people who are obliged to leave the country but who are allowed to stay based on an exceptional leave to remain (“Duldung”), circular migration is observed comparatively frequently (19.3 percent). These categories, however, relate to special forms of residence that deserve closer investigation elsewhere.

Table 3: Circular migration by selected residence purposes (one or more exits)

Purpose of residence	People with at least one exit	Resident persons (total)	Share of total
Economic activity (limited residence permit)	18,039	83,173	21.7%
Permanent settlement permit (e.g. highly qualified people, family members, former German nationals etc.)	224,622	1,440,074	15.6%
Education (limited residence permit)	16,490	138,409	11.9%
International law, humanitarian and political grounds (limited residence permit)	22,347	192,294	11.6%
Family reasons (limited residence permit)	81,963	757,728	10.8%
Temporary residence permit (asylum-seekers)	1,259	39,720	3.2%
Exceptional leave to remain (temporary suspension of removal, “Duldung”)	16,705	86,532	19.3%
Total*	461,033	4,298,510	10.7%

* Including special residence rights (e.g. “old case regulation” for people whose removal has been suspended for a long period of time, independent right of residence for foreign spouses and children, residence upon return) and other forms of residence (e.g. EU residence rights, residence rights based on the Aliens’ Act or the transitional provisions of the Residence Act, people who are exempt from the requirement to hold a residence title).

Source: AZR, cut-off-date: June 30, 2010

Circular migration by age group

The majority of circular migrants are in the employable age group between 18 and 64. This finding corresponds with the comparatively high percentage among people with a residence permit for the purpose of economic activity in the previous section. Over half (51.7 percent) of third-country nationals resident in Germany who have already moved away from Germany at least once (circular migrants, category I) are between the ages of 35 and 64. A further large group (37.3 percent) comprises those between 18 and 34. Children and youth below the age of 18 and people over 65 years of age constitute, with 6.3 percent and 4.7 percent respectively, a comparatively small proportion of the total population that exhibit circular migration patterns.

If we rank these people based on the main nationalities in terms of numbers, we obtain a differentiated picture. US citizens in category I are considerably older on average, for example: 61.5 percent of them are between the ages of 35 and 64, while 8.2 percent are even 65 and older. In contrast, the number of children and youths is conspicuously high for some nationalities from the civil war regions of former Yugoslavia – as can be seen from the example of Serbian nationals (10.5 percent) and people from the Republic of Kosovo (16.6 percent). We also see high shares of people of young employable age between 18 and 34

from Russia (47.0 percent) and the Ukraine (53.9 percent); by the same token, the figures for people in the age groups “35-64” and “65 and above” are relatively low (cf. Table 4).

Resident third-country nationals for whom two or more departures from Germany are documented (circular migrants, category II) are also unevenly distributed among the various age groups. Here as well, the biggest group is in the age range from 35 to 64 (59.2 percent). Over one third (34.2 percent) belong to the age group from 18 to 34. Only a very small percentage of children and youths have already left Germany more than once (3.4 percent). The share of older people aged 65 and above is also relatively low (3.2 percent). If we take a closer look at the nationalities, we find that the Croatian nationals again include an above-average number of children and youths under 18 (9.0 percent) and only very few people over 64 (1.2 percent). In contrast, we find an above-average share of older migrants among the Turkish (5.5 percent) and US nationals (8.9 percent).

Table 4: Circular migration by age group and nationality (one exit)

Nationality	Under 18 years of age		18-34		35-64		65 and older		Total
	absolute	in %	absolute	in %	absolute	in %	absolute	in %	
Turkey	5,526	5.78%	34,697	36.29%	47,743	49.94%	7,637	7.99%	95,604
Bosnia and Herzegovina	1,657	8.09%	6,936	33.85%	11,076	54.05%	824	4.02%	20,493
Croatia	796	4.04%	5,742	29.16%	11,961	60.74%	1,194	6.06%	19,693
Russian Federation	822	6.06%	6,384	47.09%	5,893	43.47%	457	3.37%	13,556
Serbia and Montenegro (former)	1,004	8.11%	4,252	34.35%	6,555	52.96%	566	4.57%	12,377
Serbia	1,260	10.46%	4,119	34.21%	6,115	50.78%	547	4.54%	12,042
USA	480	4.17%	3,005	26.13%	7,071	61.49%	943	8.20%	11,499
Kosovo	1,843	16.57%	4,310	38.74%	4,677	42.04%	295	2.65%	11,125
Yugoslavia (former)	866	9.68%	3,100	34.64%	4,540	50.73%	444	4.96%	8,950
Ukraine	352	4.04%	4,694	53.92%	3,360	38.60%	299	3.43%	8,705
Total (all nationalities)	23,009	6.34%	135,309	37.30%	187,547	51.71%	16,854	4.65%	362,725
Continents:									
Europe (without EU member states)	15,878	7.02%	83,219	36.79%	113,906	50.36%	13,165	5.82%	226,171
Africa	1,293	4.18%	11,859	38.37%	17,217	55.71%	534	1.73%	30,903
America	1,183	4.17%	10,082	35.50%	15,875	55.89%	1,262	4.44%	28,402
Asia	4,107	5.78%	28,035	39.45%	37,284	52.46%	1,643	2.31%	71,072
Australia	88	5.70%	527	34.11%	848	54.89%	82	5.31%	1,545

Source: AZR, cut-off-date: June 30, 2010

Circular migration by gender

The level of cross-border mobility among third-country nationals varies significantly based on gender. On average, far more men than women engage in circular migration.⁷⁹

There is a predominance of men among third-country nationals who have engaged in circular migration – i.e. who have already left and returned to Germany once since they first immigrated or were born here (circular migrants, category I): 56.7 percent are men and 43.3 percent women. The difference is more marked if we take the group of third-country nationals resident in Germany who are shown by the AZR to have previously already left Germany two and more times (circular migrants, category II). This group comprises almost 69 percent men and only just over 31 percent women.⁸⁰

Table 5: Circular migration by gender

	Male		Female		Total	
	absolute	in %	absolute	in %	absolute	in %
Resident third-country nationals	2,157,868	50.2	2,140,256	49.8	4,298,510	100.0
- with one exit (category I)	205,646	56.7	157,070	43.3	362,725	100.0
- with at least two exits (category II)	67,719	68.9	30,589	31.1	98,308	100.0

Source: AZR, cut-off-date: June 30, 2010

This finding varies in individual instances if we take the nationalities of circular migrants into consideration. Russian and Ukrainian nationals are particularly conspicuous among the group of ten most important nationalities in terms of numbers in category I, as 65.8 percent of these migrants from the Russian Federation are women, with a figure of 70.7 women for the Ukraine (compared to 43.3 percent women on average). In contrast, we find above-average shares of men among Turkish nationals, for example: over 64 percent compared to 56.7 percent men on average. The share of male Turkish nationals among circular migrants in category II, in other words migrants who have already left and returned to Germany at least twice, is even higher at 78.3, with women accounting for fewer than one in four of these migrants (21.7 percent). Men also represent around 70 percent in the groups of stateless people and foreigners whose nationality is unknown or unclear.

The figures on gender distribution of circular migrants allow clear-cut conclusions, however, when compared to the corresponding data for all foreigners resident in Germany. The gender shares are namely almost identical for all foreigners living in Germany, with 51 percent men and 49 percent women. If we look at third-country nationals only, then this is even more so (50.2 percent men, 49.8 percent women; see Table 5). It would be informative

79 This finding is more or less in line with the evaluation based on the Socioeconomic Panel on circular migration cited above (cf. Constant/Zimmermann 2007: 15, 23).

80 What may need to be taken into consideration, however, is the overall duration of residence of foreigners in Germany (cf. on this BMI/BAMF 2008: 339) as well as the fact that there was already a clear predominance of men among the immigrants who came to the Federal Republic of Germany when foreign workers were being recruited before 1974 (Münz/Ulrich 2000: 33f.). The migration statistics of the Federal Statistical Office also show a generally lower share of women both with regard to entries and exits.

to investigate in greater depth whether the sometimes widely differing gender distribution among circular migrants is due not only to the lower employment levels among women but also the result of other factors.

3.2 Data of the Central Placement Office of the Federal Employment Agency

In contrast to the data from the AZR analysed above, the data listed below taken from the Central Placement Office of the Federal Employment Agency does not provide any information on circular migration patterns but does, however, allow conclusions with regard to the temporary stays of foreigners in Germany for employment purposes. In Germany, the Federal Employment Agency is responsible for recording the official statistics on the labour market and on basic income support for job-seekers. These include unemployment statistics, employment statistics, promotion statistics and the statistics on so-called “household sharing” (Bedarfsgemeinschaft), the members of these shared households and the benefits paid in accordance with Book Two of the German Social Code (basic income support for job-seekers) for all regions of Germany. The numbers of foreign seasonal, contract and guest workers employed in Germany each year are also recorded.

The group of seasonal workers is made up of workers active in the agricultural sector, in the hotel and restaurant trade (difference between total and agriculture) and as fair-ground helpers and showmen’s assistants. The Federal Employment Agency cannot provide any details of specific residence periods in Germany, as the workers in question do not have to de-register with the authorities when they return to their home countries. However, the admissions are limited from the outset depending on procedure, which means we can at least draw some initial conclusions from the figures.

These admission periods (maximum duration of residence in Germany) for the procedures handled by the Central Placement Office are as follows:

- for home helps: max. 3 years
- for seasonal workers: max. 6 months per calendar year
- for fairground helpers and showmen’s assistants: max. 9 months per calendar year
- for guest workers: max. 18 months
- for contract workers: for the duration of the contract; generally 2 years, exceptions possible
- for foreign vocational college students: max. 3 months
- for speciality chefs: max. 4 years
- for international personnel exchange (employment of foreign workers of an international company in a German location): max. 3 years
- for holiday employment of foreign students: max. 3 months during the semester holidays in the home country

As already mentioned, it is fair to assume that many seasonal workers exhibit circular migration patterns, as employers are able to regularly recruit workers they know by name for several years in a row. The figures from the Federal Employment Agency do not, how-

ever, supply any information on whether foreign seasonal workers are people who have come to Germany several times or are people who have come to Germany for the first time.⁸¹

Seasonal workers

Whereas employment figures for foreign contract and guest workers have fallen in recent years, the placement figures for foreign seasonal workers (including fairground helpers and showmen's assistants) have remained more or less constant and even showed an increase from 2008 to 2009 (see Table 6).

Table 6: Employment or placement of contract, guest and seasonal workers, 2005-2009

	2005	2006	2007	2008	2009
Contract workers	21,916	20,001	17,964	16,576	16,209
Guest workers	1,858	1,415	1,040	742	652
Seasonal workers*	329,789	303,492	299,657	285,217	294,828

* including fairground helpers and showmen's assistants

Source: Federal Employment Agency

As the statistics are not person-based, there are no exact figures for the extent to which seasonal workers return to Germany several years in succession.

International personnel exchange

The number of approvals issues by the Federal Employment Agency for skilled employees who took up employment in Germany within the framework of international personnel exchange increased between 2006 and 2008 but fell again in 2009 (see Table 7).

Table 7: International personnel exchange, 2006-2009

	2006	2007	2008	2009
India	1,710	2,225	2,558	2,195
USA	699	705	726	560
China	591	740	608	472
Other nationalities	1,783	1,749	1,763	1,202
Total	4,783	5,419	5,655	4,429

Source: Federal Employment Agency

3.3 Migration statistics as a potential data basis

A third relevant source for the measurement of the immigration and departure of foreigners within the framework of this study are the migration statistics of the Federal Statistical Office, but these statistics have not provided any useful information on repetitive mi-

⁸¹ In view of the definitions discussed in Section 1.2, seasonal workers cannot be described as circular migrants in the strict sense of the term, as it is often the case that they do not move their place of residence to Germany and then back to their country of origin but only stay in Germany temporarily from the outset (sometimes in temporary housing), much like certain categories of foreign students or tourists.

gration patterns to date. In line with the registration laws, people who move their place of residence outside Germany have an obligation to register or de-register with the competent municipal registration authorities.⁸² The personal details documented during this process include: destination or place of origin (old and new place of residence), gender, family status, date of birth, nationality and legal membership or non-membership of a religious denomination. The enactment of an amendment to the Population Statistics Act on August 1, 2008 supplemented the details supplied by the registration authorities to the statistical offices with the parameters “place of birth” and “country of birth” as well as – in the case of people entering Germany from abroad – the “date of departure from Germany to another country prior to entry into Germany”.⁸³

The migration statistics are based on the number of cross-border moves. People who enter or leave Germany more than once a year are therefore included more than once in the statistics, provided that they register or de-register in an orderly fashion. This means that the German migration statistics are case-based and not person-based statistics. As a result, the number of migration cases is always slightly higher than the number of people who actually engaged in migration in any particular year. At the same time, however, those people who do not register or de-register are not included in the entry and exit statistics, and not all people who leave Germany de-register with the authorities. The outward and return migration figures for foreigners leaving Germany are therefore always understated by the official exit statistics. It should also be taken into account, however, that the immigration statistics do not include an unknown number of people who do not meet their registration obligations or who are in Germany unlawfully, and this results in figures that are lower than they should be.

Germany’s migration statistics are not “conventional migration statistics” that take account of the parameter of “duration”, as the key criterion is registration or de-registration, irrespective of the duration of residence. It is not the residence title but the move into housing that is decisive for documentation in the entry and exit statistics. The migration statistics do not provide any information on the form of migration in the event of entry or exit. An immigrant from the Russian Federation, for example, may have entered Germany as an ethnic German repatriate, an asylum-seeker or a student or within the context of family reunification without this being apparent from the immigration statistics (cf. BAMF/EMN 2010b: 7-8; BMI 2010/BAMF: 14-16).

The migration statistics currently supply no details that allow empirical determination of the scope of temporary or circular migration. The fact that the date of the previous departure from Germany has been documented since the amended Population Statistics Act came into force on August 1, 2008 could allow certain conclusions regarding multiple or circular migration in the medium term. The first dependable insights are not expected until the 2010 reporting year at the earliest.

82 Members of foreign armed forces as well as members of diplomatic and consular missions and their family members are generally exempt from this requirement.

83 cf. Section 4 No. 5 Population Statistics Act; also see Mundil/Grobecker 2010: 616f.

4 Conclusions and Outlook

The data section of this study shows that circular migration patterns can be observed among a considerable percentage of foreigners from third countries living in Germany, even though – as is also evident – the German immigration laws promote these kinds of migration patterns only indirectly at best, there are currently no targeted programmes in place to facilitate multiple migration movements and the measures that do exist are in their infancy. This appears to confirm one of the basic assumptions of migration research outlined at the beginning of this study: namely that, with or without explicit state support, circular forms of migration are not least an expression of global developments like the internationalisation of the working world, new types of mobility patterns and changing educational, training and labour markets.

With regard to temporary stays for the purpose of education or economic activity, Germany can point to proven instruments and legal regulations governing areas such as seasonal employment as well as contract and guest workers which can be adapted to meet national economic needs or political developments on European level.

Policy options

Immigration into the labour market is the area of migration policy in which only few harmonisation measures have been taken to date at the level of the European Union, as the responsibility for regulating this kind of immigration mainly lies with the individual member states. Securing these broadly based options for the management of labour market and immigration and safeguarding procedural autonomy is seen as one of the central negotiating principles of the German government in the deliberations on common legislative instruments of the European Union in the area of economic migration.⁸⁴

If a political decision is made to promote circular migration on labour market policy or development policy grounds or to try out circular migration within the framework of new mechanisms for migration management and control, there are various ways of achieving this. First, there is the option of implementing targeted programmes for the circular migration of people from specific countries of origin within the context of bilateral or multilateral agreements. Regardless of countries of origin, it would also be possible to create suitable regulations for specific occupational groups in the event of shortages on the German labour market. Then, over and above specific programmes, there is the option of creating or underpinning incentives of a general nature which would facilitate voluntary (“spontaneous”) circular migration for potentially all migrants. Possible incentives are outlined in the preceding sections of this study, in particular in Sections 2.2, 2.3 and 2.4. They concern:

⁸⁴ cf. BT-Drs. 17/3561 dated October 28, 2010, p. 9.

- the legal bases for immigration for the purpose of economic activity
- the validity of residence titles even in the event of longer periods of absence
- the framework for nationality law
- secure residence titles and successful integration and re-integration
- the portability of social security benefits and pension entitlements
- questions relating to taxation and insurance

In order to increase the incentives for circular migration in this context, it would probably not be necessary to fundamentally change or reform the German residence and social insurance laws but only to make some minor adjustments to specific provisions.

First of all, however, it would be basically necessary to identify the expectations linked to circular migration and to define the interests that are to be pursued by promoting these kinds of migration patterns – in other words, labour market policy and/or development policy – or to determine whether the goal is primarily to allow more effective migration management with regard to immigration conditions or the enforcement of the departure obligation of foreigners admitted to Germany for a limited period of time.

The ideal strategy would appear to meaningfully combine these interests within the context of an overall approach. The current design of the various mobility partnerships and bilateral agreements with third countries on European level and on the level of the national states seems to go at least some way towards doing this (on this, see Section 2.3.3). Many of these partnerships and agreements already contain individual elements of the various perspectives – relating to labour market policy, development policy and migration management policy in the form of such measures as visa facilitation, quotas for the temporary residence of workers from third countries or readmission agreements. At the current time, however, experiences on both German and European level appear to be insufficient to form any basis for concrete statements in this regard.

Integration of different perspectives

Initiatives and programmatic approaches geared towards circular migration in the EU member states generally appear to be primarily driven by labour market policy interests, in particular the desire to meet short-term or sector-specific needs – but without totally neglecting development policy aspects. Indeed, the “triple-win scenario” is often explicitly mentioned (see also Section 1.2). However, the theoretically postulated positive impacts of these kinds of programmes on the development of the countries of origin of circular migrants do not necessarily always promote development in practice. In this connection, the literature warns of the risk of brain drain for so-called developing countries or emerging economies. In contrast, the existence of options for employment or entrepreneurial initiatives in the regions of origin can be seen as a key precondition for a form of circular migration that is also successful in terms of development policy (cf. Council of Europe 2009: 71).

In some areas, it is still the case that the political debates, organisational models and evaluation approaches seem to be part of different processes of discourse, due not least to the sometimes differing approaches and interests of domestic and development policy actors within the context of national and Community policy-making (cf. Parkes 2010: 110ff.).

One option to bridge this divide would be to work towards closer integration of the relevant political and organisational structures in the areas of migration management and development. Where feasible, established instruments and actors in the field of development cooperation could be incorporated in this process “on the ground” in the third countries to ensure that funding (for the provision of micro-loans following temporary residence or for the promotion of diaspora communities, for example) and experience are utilised in as targeted a manner as possible. The actors with the corresponding experience include not only the organisations that implement development cooperation projects, their partner organisations in the third countries and specialised NGOs in the countries of origin and destination countries but also international organisations like the International Organization for Migration (IOM). The cooperation of these bodies with governments and labour administrations on both sides, incorporating local mobilising structures and making use of the relevant European funding systems, could pave the way for the development of good practices (cf. Council of Europe 2009: 73).⁸⁵

Future research needs and potential data sources

Existing information and insights into circular migration should be subjected to further painstaking analysis and new empirical data should be gathered. By providing initial indicative data from the AZR on “naturally occurring” or “spontaneous” circular migration, this study has made a contribution to this endeavour. A further step would be to refine the definition of what is meant by circular migration and to further determine the statistically identifiable circular migration patterns as a basis for improving policy options.

Alongside the AZR, it might be possible to develop additional sources of statistics for circular forms of migration and mobility. One option would be to document the parameter “any previous stay” within the framework of data collection on the placement of seasonal workers and the admission of certain categories of foreign workers, such as home helps or people coming to Germany as part of an international personnel exchange scheme. In this way, it would be possible to obtain information on the scope and significance of repeat temporary migration movements for the purpose of economic activity (“shuttle migration”). As concerns the migration statistics, the introduction of the new parameter “date of departure” is expected to result in an improvement of the data situation in relation to circular migration in the near future.

However, more extensive statistical knowledge on the presence or scope of circular migration patterns alone is not sufficient, as this in turn will generate a need for new research – above all into whether and to what extent it is actually possible to measure the benefits of circular migration for both sides: in other words, for the national economy of both the country of origin and the destination country as well as for the migrants themselves, leading to the “triple win” that is assumed to exist by the supporters of programmes for circular migration. This is an area in which above all qualitative sociological migration

⁸⁵ The “Temporary Circular Labour Migration” model (TCLM) between Spain and Colombia (cf. IOM 2009) can serve as an example for this kind of project; it is currently being optimised based on interim evaluations and with the support of experts in the theory and practice of the subject matter.

research has supplied initial insights to date. In the case of Germany, there are still only very few studies based on interviews with returning and, where applicable, circular migrants on the motives for migration. In addition, it would also be possible in future to continue to pursue approaches geared towards the use of representative repeat surveys like the Socio-economic Panel (cf. Constant/Zimmermann 2007).

Options and limits of policy development

With regard to the shaping or further development of a policy for circular or temporary migration, one limitation that must also be taken into consideration is that experience to date shows that it is extremely difficult to predict, plan or control long-term migration movements in advance. This is true of the employment of foreigners during the recruitment phase of the 1960s and early 1970s as well as of the current efforts to encourage immigration by highly qualified specialists. It is also the case with circular migration that we cannot predict the effects of the introduction or amendment of individual legal provisions on actual migration movements.

It will therefore be important to try out different options and analyse their effects. Provided that they contain elements to promote temporary migration for the purpose of economic activity, bilateral agreements and mobility partnerships that are still under negotiation will also supply insights into managed circular migration for Germany within the clearly defined context of agreements and quotas with individual third countries. Based on the experiences gained during these programmes confined to specific geographic regions or countries of origin, it will then be possible to draw conclusions for the further development of policy in this field.

Legislation that is currently proposed on the level of the European Union could provide new insights with regard to admission procedures for temporary work residence on a larger scale: if, for example, the implementation of the planned EU directive on the conditions for entry and residence of third-country nationals for the purpose of seasonal employment really does lead to the introduction of multiple entry visas or multi-seasonal work and residence permits, and if seasonal employment in Germany – which is primarily focused to date on Eastern European countries – was extended to all third countries, the effect of these stipulations should be evaluated at the earliest possible stage. Only then would it be possible to determine whether this might form the basis for conclusions regarding further types of time-limited work-related stays.

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